

**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit**

FRANK R. McCORMICK, as Receiver of the FIRST  
NATIONAL BANK OF SALMON, a Corpora-  
tion,

*Appellant,*

vs.

HARRY G. KING, NORMAN I. ANDREWS,  
GEORGE BUCK, GUY E. BOWERMAN, FRED  
G. HAVEMANN, JOHN LOTTRIDGE and E. S.  
EDWARDS,

*Appellees.*

**Transcript of Record**

**Filed**

FEB 5 - 1916

**F. D. Monckton**  
Clerk

*Upon Appeal from the United States District Court  
for the District of Idaho, Eastern Division.*



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Circuit Court of Appeals  
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FOURTH AMENDED BILL OF COMPLAINT.

*In the District Court of the United States, in and for  
the District of Idaho, Eastern Division.*

FRANK R. McCORMICK, as Receiver of the FIRST  
NATIONAL BANK OF SALMON, a Corpora-  
tion, *Plaintiff,*

vs.

HARRY G. KING, NORMAN I. ANDREWS,  
GEORGE BUCK, GUY E. BOWERMAN, FRED  
G. HAVEMANN, JOHN LOTTRIDGE and E. S.  
EDWARDS, *Defendants.*

IN EQUITY—No. . . . .

*To the Honorable, the Judges of the District Court of  
the United States, in and for the District of  
Idaho:*

Frank R. McCormick, of Cincinnati, and a citizen of the State of Ohio, Receiver of the First National Bank of Salmon, a corporation organized and existing under the National Banking Laws of the United States, and doing business at Salmon, in the County of Lemhi, State of Idaho, by the direction of the Honorable Comptroller of the Currency of the United States, and by leave of the Court in that behalf first had and obtained, brings this fourth amended bill for and on behalf of the said corporation, against Harry G. King, Norman I. Andrews, George Buck, Guy E. Bowerman and E. S. Edwards, citizens of the State of Idaho, and Fred G. Havemann, a citizen of the State of Oregon, and John Lottridge, a citizen of the State of California.

And thereupon your orator complains and says:

## I.

That the First National Bank of Salmon is a National Banking corporation, duly organized and existing under the laws of the United States, and as such has at all times since on or about the 13th day of January, 1906, been doing a general banking business at Salmon, in the County of Lemhi, State of Idaho, until on or about the 8th day of June, 1911, when the said bank voluntarily suspended business, and that thereafter, on or about the 8th day of August, 1911, the Honorable Comptroller of the Currency of the United States determined the said bank to be in an insolvent condition, and placed one Harry Yeager, temporarily, in charge thereof as Receiver; and that afterwards, on or about the 11th day of September, 1911, the Honorable Comptroller of the Currency appointed the said Frank R. McCormick as the Receiver for the said bank for the purpose of winding up its affairs, who thereupon duly qualified as such Receiver, and entered upon the discharge of his duties as such, and that the said Frank R. McCormick is now the duly appointed, qualified and acting Receiver for the said First National Bank of Salmon, for such purpose, having full charge of all of the assets and business affairs thereof, under the direction of the Honorable Comptroller of the Currency of the United States.

## II.

That the said First National Bank of Salmon was originally organized with a capital stock of twenty-five thousand dollars, divided into 250 shares, of the

par value of One Hundred Dollars each, and that afterwards, on or about the 5th day of February, 1910, the said capital stock was increased to the amount of Fifty Thousand Dollars, divided into 500 shares, of the par or face value of One Hundred Dollars each; that in the course of its business transactions, the directors of the said bank created a surplus fund on the books of the said bank, of the sum of Fifteen Thousand Dollars, at the following times:

One thousand dollars on the 7th day of January, 1908.

Four thousand dollars on the 5th day of January, 1909.

Five thousand dollars on or about the 5th day of February, 1909, and five thousand dollars on or about the 9th day of July, 1910.

### III.

That for the purpose of enabling the said bank to pay its debts and obligations, the Honorable Comptroller of the Currency, on or about the 11th day of January, 1912, levied an assessment and requisition upon the shareholders of the said First National Bank of Salmon, to the full face or par value of the shares of stock of the said bank, held by each of the said shareholders respectively, and amounting in all to the sum of Fifty Thousand Dollars, of which amount there has been paid into the hands of the said Receiver, the sum of about Twenty Thousand Dollars, and that owing to the insolvency of a number of the said shareholders, the said Receiver will be



unable to collect approximately the sum of Twenty Thousand Dollars of such assessment, and that, after realizing upon all of the assets of the said bank now available, and applying the same to the debts and obligations thereof, the same will be insufficient to pay all of the debts and obligations thereof, and that a deficiency of approximately the sum of Twenty Thousand Dollars of unpaid obligations will remain.

#### IV.

That the defendants Harry G. King, Norman I. Andrews and Guy E. Bowerman were duly elected and qualified, and thereupon became duly acting members of the Board of Directors of the said Bank, at the time of its organization, and continued to act as such until the same was placed in the hands of a Receiver; that the said Harry G. King was at all such times the President of the said Bank, except during the year 1908, when he was the Cashier thereof, having the general management thereof; and that the said Norman I. Andrews was the Vice President thereof, from and after the 10th day of January, 1908; that the defendants, George Buck and John Lottridge, were duly elected and qualified and became acting members of the Board of Directors of the said Bank, from and after the 17th day of November, 1909, and continued as such until the failure thereof; that the said John Lottridge was the duly appointed and acting Cashier of the said Bank from and after January 1st, 1910, until June 8, 1911; that the defendant, Frank G. Havemann, was a duly elected, qualified and acting member of

the said Board of Directors from January 18, 1910, until the failure of the said bank, being the assistant cashier during said period; that the defendant, H. S. Edwards, was a duly elected, qualified and acting member of said Board of Directors from May 15, 1906, until January 18, 1910.

### V.

That the defendants herein, Harry G. King, Norman I. Andrews, Guy E. Bowerman, Fred G. Havemann, George Buck and John Lottridge, and each of them, during the term of service of each of said defendants as director as aforesaid, knowingly permitted and assented to the making of loans by the officers, agents and servants of the said First National Bank of Salmon far in excess of the limit provided by Section 5200 of the Revised Statutes of the United States, whereby large sums of money belonging to the stock holders and depositors of said bank became wasted and lost. That the respective amounts of said loans, the dates thereof, the persons to whom the same were made, are as follows, to-wit:

(a) On or about the 15th day of February, 1910, the Salmon Lumber Company, a corporation, the shares of which were owned principally by members of the family of said H. G. King, was owing the said First National Bank, on account of an overdraft, the sum of \$1597.92; and on the first day of July, 1910, the said Salmon Lumber Company was indebted to the said First National Bank upon a promissory note theretofore executed, in the sum of \$3500.00; that on said last-named date, there was loaned to

said Salmon Lumber Company by said bank, the further sum of \$2500.00; that thereafter, to-wit, on or about the 2nd day of November, 1910, there was loaned by said First National Bank to the said Salmon Lumber Company, the further sum of \$3500.00; that on the 10th day of December, 1910, there was loaned to the said Salmon Lumber Company, by said First National Bank, the further sum of \$6000.00, and on or about the 4th day of January, 1911, the further sum of \$3000.00.

(b) That on or about the 11th day of July, 1910, there was loaned by the said bank to E. M. Pollard and S. A. Pollard, husband and wife, of Salmon City, Lemhi County, Idaho, the sum of \$7950.00 as evidenced by two promissory notes of that date, one for \$1700.00 and the other \$6250.00.

(c) That for some time immediately prior to January 2, 1911, one Harry Brown was permitted and allowed to overdraw at said bank in various large amounts, to cover which said overdrafts said Brown, from time to time, executed his promissory notes; that on said date there was owing by said Brown, on such notes and on the overdraft existing on said date, the total sum of \$12,750.00, for which said Brown, on said date, executed and delivered his two certain promissory notes for \$6250.00 and \$6500.00, respectively.

## VI.

That the said loans so made as aforesaid to the Salmon Lumber Company, F. M. Pollard and S. A.



Pollard and Harry Brown were each and all in excess of one-tenth part of the capital stock of the said bank actually paid in and were each and all in violation of Section 5200 of the Revised Statutes of the United States; that at the time said loans were made, as aforesaid, the said defendant Harry G. King was the duly elected and acting President of said bank, the said defendant Norman I. Andrews the duly elected and acting Vice President, and the said defendant John Lottridge the duly elected Cashier thereof, and with the said defendants Guy E. Bowerman, George Buck and Fred G. Havemann constituted the Board of Directors of said bank. That at the meeting of the Board of Directors held on the 18th day of January, 1910, Section 34 of the by-laws of said bank was by resolution duly passed, amended to read as follows:

“The Board of Directors of the bank shall at each monthly meeting or oftener examine and approve all loans and discounts and such approval shall be recorded in a book kept for that purpose.” And plaintiff alleges that at each and all of the regular meetings of the said Board of Directors which were held monthly between the said 18th day of January, 1910, and the 1st day of March, 1911, between which said dates the said excessive loans were made as aforesaid, each and all of said defendants Harry G. King, Norman I. Andrews, George Buck, Fred G. Havemann and John Lottridge attended the said meetings of the said Board of Directors and each month personally passed upon and knowingly approved each monthly statement of loans which dur-

ing the month covered by each of said statements had been made by said bank through the said Harry G. King, President; Norman I. Andrews, Vice-President, and John Lottridge, Cashier, who during said period were charged with the management and conduct of its affairs, and plaintiff is informed and believes and upon information and belief alleges that as to the said excessive loans so made to said Salmon Lumber Company, as aforesaid, the said defendant Norman I. Andrews, George Buck and Fred G. Havemann well knew at the time said loans were made of the interest held, owned and possessed by said defendant King and the members of his family in the said Salmon Lumber Company, and that said defendants, and each of them, well knew at the time said loans were made that the said Salmon Lumber Company was doing business with said First National Bank, and that the said defendants Harry G. King and John Lottridge were making the said excessive loans to said Salmon Lumber Company, and carelessly, negligently, wilfully and knowingly permitted and allowed the said King and Lottridge to make said illegal loans whereby the funds of said bank became lost as hereinafter alleged; that as to the said loans so made, as aforesaid, to the said F. M. Pollard and S. A. Pollard and to the said Harry Brown, plaintiff alleges that the same were made for said bank by said Harry G. King and said John Lottridge, then President and Cashier respectively of said bank, and that the said defendants Norman I. Andrews, George Buck and Fred G. Havemann well knew that

said excessive loans were being made, and carelessly, negligently, knowingly and wilfully permitted and allowed the same to be made, whereby the funds of said bank became lost as hereinafter alleged.

## VII.

Plaintiff further alleges that the said defendant Guy E. Bowerman, notwithstanding the fact that he was from the time of the organization of said bank on the 13th day of January, 1906, until the 8th day of June, 1911, when the said bank suspended business, a duly elected, qualified and acting member of the Board of Directors of said bank, and notwithstanding his oath as such director that he would diligently and honestly manage the affairs of said bank and would not willingly permit to be violated any of the provisions of the law relating to the conduct thereof, carelessly, wilfully and negligently failed and neglected to attend any meeting of the Board of Directors of said bank during the entire period of his incumbency as a director, and wilfully, carelessly and negligently failed during said entire period to discharge his duties and obligations as a member of the Board of Directors of said bank in examining into and keeping well informed concerning its affairs and particularly the loans which were being made by said bank and wilfully, carelessly and negligently during said period failed to exercise proper or any supervisory authority as such director over said bank's affairs, but to the contrary the said Guy E. Bowerman, during the period when the affairs of said bank were being grossly mismanaged and par-

ticularly during the period when the said excessive loans were made, as aforesaid, with knowledge from the published statements of said bank required to be furnished by the Comptroller of the Currency and from other sources, that the affairs of said bank were being grossly mismanaged and that excessive and illegal loans were being made, carelessly, negligently and wilfully permitted and allowed the said King and Lottridge to make such loans and particularly the loans to the said Salmon Lumber Company, F. M. Pollard, S. A. Pollard and Harry Brown, as hereinbefore set forth, whereby the funds of said bank became lost as hereinafter set forth.

#### VIII.

Plaintiff alleges that the said Salmon Lumber Company, during the time said excessive loans were being made to it, became insolvent and was thereafter compelled to suspend business with assets insufficient to satisfy and discharge its liabilities, and that no part of the monies so loaned by said bank to said lumber company have ever been repaid to said bank, except the sum of \$2360.00, paid on the . . . . . day of . . . . . 19 . . . , which was credited on the said loan of July 27, 1910, and the further sum of \$1500.00, which has been paid to this plaintiff by the trustee of said Salmon Lumber Company, and a loss will result to said First National Bank on account of said loans of approximately \$10,000.00.

That no part of the said \$7950.00 loaned to the said F. M. Pollard and S. A. Pollard was ever repaid by them to said bank, and that although judgment



has been recovered on said notes so executed by said Pollards the same remains unsatisfied except for a credit of \$150.00 for a lot purchased by this plaintiff for his said trust upon execution and order of sale under said judgment, and plaintiff alleges that the balance of the money so loaned to said Pollards will be lost to said bank.

That the said Harry Brown is insolvent and although he has turned over to this plaintiff all his available assets, not more than approximately \$2000.00 will be realized therefrom and the balance of said excessive loans so made to him as aforesaid will be lost to said bank.

### IX.

This plaintiff further alleges that said bank did a large and profitable business after its organization until the close of the year 1909, and the affairs thereof were in a fairly prosperous condition until the beginning of that year when the then Board of Directors, among whom were the defendants Harry G. King, Norman I. Andrews, E. S. Edwards, and Guy E. Bowerman entered upon a careless and negligent management of the affairs of said bank, and on or about the month of March, 1909, said Board of Directors without protest from and with the knowledge of said Harry G. King, Norman I. Andrews, E. S. Edwards and Guy E. Bowerman negligently and carelessly and without due or any regard to the rights of the stockholders of said First National Bank of Salmon purchased all the assets of a rival bank in said town of Salmon,

the bank of Langsdorf & Company, paying therefor the sum of \$14,500.00 over and above the par or face value of the assets thereof, and also \$14,500.00 over and above the true value of the assets of said bank, all of which was at the time of said purchase well known to the said defendants Harry G. King, Norman I. Andrews, E. S. Edwards and Guy E. Bowerman, or should have been known to said named defendants if they had used proper or any care or diligence in determining the value of said assets at the time of said purchase, and by reason of the negligence and carelessness of said defendants in not ascertaining the true value of said assets, and in paying therefor out of the funds of said First National Bank of Salmon the sum of \$14,500.00 in excess of the true value thereof, the money of the stockholders of said First National Bank of Salmon became thereby lost and negligently wasted to approximately the sum of \$14,500.00.

## X.

Plaintiff further alleges that the said defendants Harry G. King, Norman I. Andrews, George Buck, Guy E. Bowerman, Fred G. Havemann and John Lottridge during their respective terms of office as hereinbefore set forth, wilfully, carelessly and negligently failed to properly manage and conduct the affairs of said bank and wilfully and carelessly allowed the same to be grossly mismanaged whereby the assets thereof were wasted and lost; that between the 1st day of January, 1910, until the failure of said bank on the 8th day of June, 1911, the said defend-

ants Harry G. King as President, and John Lottridge as Cashier, who, subject to the authority of the said Board of Directors, were operating said bank and conducting its affairs, wilfully, carelessly and negligently loaned the funds of said bank to various persons and companies upon insufficient or no security and to various other persons and companies not having sufficient assets with which to repay the same whereby large sums of money belonging to stockholders and depositors of said bank became lost and wasted; that said defendants King and Lottridge as President and Cashier respectively, of said bank during the time aforesaid, carelessly, negligently and wilfully made large loans of the funds of said bank to officers thereof and to companies in which some of said officers were interested, which said loans so made were far in excess of any amount justified by the financial standing of the persons and companies to whom said loans were made and carelessly and negligently and wilfully and in direct violation of the by-laws of said bank permitted the money and funds of said bank to be paid out upon checks and orders of various persons and companies that did not have sufficient or any funds on deposit therein with which to pay such checks and orders whereby large sums of money of said stockholders and depositors became wasted and lost. That by way of particularity as to certain of the numerous acts of gross mismanagement hereinbefore referred to plaintiff alleges:

(a) That on the 11th day of July, 1910, there was loaned by said bank to F. M. Pollard and S. A.

Pollard, husband and wife, of Salmon City, Lemhi County, Idaho, the sum of \$7950.00 as evidenced by two notes of that date payable to said bank, one for \$1700.00 and the other for \$6250.00, which money has never been repaid by said Pollards or either of them; that at the time said loans were made the financial standing of said Pollards would not justify the making of said loans, or either of them, and said loans were wilfully, carelessly and negligently made without sufficient or any security, and plaintiff alleges that although judgment has been recovered upon said notes, upon execution and order of sale thereunder, only \$150.00 has been or can be realized to apply upon said judgment, which said amount is the value of one lot purchased by this plaintiff for his said trust, and the balance of the money so loaned is, according to information and belief of this plaintiff, a total loss. Plaintiff alleges that the said loan is the same loan mentioned in paragraph V hereof as being in excess of the amount allowed to be loaned under the provisions of Section 5200 of the Revised Statutes of the United States.

(b) That on or about the 15th day of February, 1910, the Salmon Lumber Company, a corporation, the shares of which were owned principally by members of the family of said H. G. King, was owing the said First National Bank, on account of an overdraft, the sum of \$1597.92, and on the first day of July, 1910, the said Salmon Lumber Company was indebted to the said First National Bank upon a promissory note theretofore executed, in the sum of



\$3500.00; that on said last-named date, there was loaned to said Salmon Lumber Company by said bank the further sum of \$2500.00; that thereafter, to-wit, on or about the 2nd day of November, 1910, there was loaned by said First National Bank to the said Salmon Lumber Company, the further sum of \$3500.00; that on the 10th day of December, 1910, there was loaned to the said Salmon Lumber Company by said First National Bank, the further sum of \$6000.00, and on or about the 4th day of January, 1911, the further sum of \$3000.00; that all of said obligations of said Salmon Lumber Company remain unpaid except the sum of \$2360.80, which was credited on the said loan of July 27, 1910, and the further sum of \$1500.00, which has been paid to this plaintiff by the trustee of the Salmon Lumber Company. That at the time said loans were made the financial standing of said Lumber Company would not justify the making of said loans or any of them, and that the same were wilfully, carelessly and negligently made without sufficient or any security, and that said Salmon Lumber Company became insolvent during the period when said loans were being made to it, and was afterwards compelled to suspend business, leaving assets insufficient to settle its liabilities, and plaintiff alleges that there will be a loss to said bank on account of said loans of approximately \$10,000.00. Plaintiff alleges that said loans are the same loans mentioned in paragraph V hereof and there alleged to have been in excess of the amount allowed to be loaned under

the provisions of the Section 5200, Revised Statutes of the United States.

(c) That for some time immediately prior to January 2, 1911, one Harry Brown was permitted and allowed to overdraw at said bank in various large amounts to cover which said overdrafts said Brown, from time to time, executed his promissory notes; that on said date there was owing by said Brown on such notes and on the overdraft existing on said date, the total sum of \$12,750.00, for which said Brown on said date executed and delivered his two certain promissory notes for \$6250.00 and \$6500.00 respectively; that at the times said overdrafts were allowed and said loans made as aforesaid, the financial standing and credit of the said Harry Brown would not justify the making of said loans, or any of them, and that the same were wilfully, carelessly and negligently made, without sufficient or any security; that the said Harry Brown is insolvent and although he has turned over to this plaintiff all his available assets there will not be realized therefrom more than the sum of \$2000.00, and the balance of the loans so made to Harry Brown will result in a total loss to said bank. Said loans are the same loans mentioned in paragraph V hereof and therein alleged to be in violation of Section 5200, Revised Statutes of the United States.

## XI.

Plaintiff further alleges that at the times when said loans were made as set forth in paragraph V hereof, the said defendants Norman I. Andrews,

George Buck and Fred G. Havemann well knew of the making of said loans and of the financial standing and responsibility of the persons and companies to whom the same were made and plaintiff further alleges that said defendants and each of them without regard to their oath as directors of said bank that they would diligently and honestly manage the affairs thereof, and would not willingly permit to be violated any of the provisions of law relating to the conduct thereof and without exercising proper or any supervisory authority over said bank's affairs, wilfully, carelessly and negligently permitted and allowed said loans to be made and at the monthly meetings of the Board of Directors of said bank held during the period within which said loans were made, passed upon, approved and ratified said loans so carelessly and negligently made as aforesaid by the said Harry G. King, President, and the said John Lottridge, Cashier of said bank. And plaintiff further alleges that the said defendant Guy E. Bowerman, notwithstanding he was duly elected, qualified and acting director of said bank from the organization thereof on the 13th day of January, 1906, until the failure of said bank on the 8th day of June, 1911, wilfully, carelessly and negligently failed and neglected to attend any of the meetings of the Board of Directors of said bank and negligently, carelessly and wilfully failed during the time when such wrongful acts were committed to examine the books and records of said bank to ascertain said bank's condition, and to ascertain the amount of overdrafts and loans allowed and

made to various patrons of said bank, and wilfully, carelessly and negligently failed during the long period when such mismanagement was going on to exercise as such director proper or any supervisory authority over said bank's affairs, whereby said loss might and could have been prevented and avoided, but to the contrary and with knowledge that the affairs of said bank were being grossly mismanaged and with knowledge that excessive and illegal loans were being made to various persons and companies without regard to his oath as such director that he would diligently and honestly manage the affairs of said bank, and would not willingly permit to be violated any provisions of law relating to the conduct thereof, carelessly, negligently and wilfully permitted and allowed said King and Lottridge to make said excessive and illegal loans as hereinbefore set forth, whereby the funds belonging to the stockholders and depositors of said bank became lost and wasted as aforesaid.

## XII.

That on the 9th day of July, 1910, owing to the careless and negligent conduct and wrongful and illegal acts as hereinbefore set forth of the defendants during their terms of office respectively, the capital and surplus of said bank had become much impaired and the value of the assets thereof greatly depreciated, but notwithstanding such fact the said defendants Harry G. King, Norman I. Andrews, George Buck, Fred G. Havemann and John Lottridge at said time wrongfully, knowingly and wilfully assented to



the declaring of a dividend out of the available assets of said bank of the sum of \$2500.00, and paid the same to the stockholders thereof including their proportionate share to each of said defendants, and the said defendants further in violation of law knowingly and carelessly and negligently permitted and assented to the carrying of the sum of \$5000.00 to the surplus account of said bank, thus showing on the said books the right to make loans in excess of the amount which could have been legally loaned had the books shown the true condition of the affairs of said bank. Plaintiff alleges that although the said defendant Guy E. Bowerman was not present at the meeting of the Board of Directors at which the said dividend was declared and the said \$5000.00 carried to the surplus account of said bank, he, the said Guy E. Bowerman, wilfully and knowingly accepted his proportion of said dividend, and with knowledge that the said bank was being mismanaged, and that large and excessive loans were being made, in violation of his oath as such director, and without exercising proper or any supervisory control over the affairs of said bank, which as director he was duty bound to do, he, the said Guy E. Bowerman, wilfully, carelessly and negligently permitted the said dividend to be declared and the said \$5000.00 to be carried to the surplus account of said bank as hereinbefore alleged.

### XIII.

That at the time of the closing of said bank the said defendants during their respective terms of of-

fice, as aforesaid, in violation of the by-laws of said bank, and in violation of their duties as directors of said banking association, had carelessly and negligently by failing to supervise the affairs of said bank, permitted to be paid checks and orders drawn on said bank of persons and companies not having any funds on deposit therein with which to pay the same to the extent of \$9,800; and that many of the persons who made such overdrafts were insolvent, and have been and now are unable to repay the money so drawn out, and as a result thereof a large amount of the money so paid out will be lost to the said bank. That the names of the persons and companies having no funds in said bank and upon whose orders and checks payments of money were made, together with a statement of condition of the respective accounts of said persons at the dates when such payments were made are fully set forth in plaintiff's Exhibit "A," attached to the original bill of complaint on file herein and hereby referred to, and made a part hereof, and plaintiff alleges that no payments have been made by said persons or companies to said bank or to this plaintiff as receiver except as appears in the said "Exhibit A"; that if said defendants had performed their duties as directors and supervised the affairs of said bank, they would have known that said overdrafts were being permitted and would have stopped the same, and said losses would not have occurred.

## XIV.

That the losses which will result to the said bank on account of the said excess loans, will reach the probable amount of Twenty-five to Thirty Thousand Dollars; and that the losses which will result thereto from the said overdrafts will reach the probable amount of Four Thousand Dollars or more; and that the losses which will result thereto from the declaration of the said illegal dividend will reach the amount of Two Thousand Five Hundred Dollars; and that all such losses are directly caused by the careless and negligent handling of the funds, the mismanagement of the affairs of the said bank, and the wilful neglect of said defendants as directors of said institution as hereinbefore particularly set forth.

## XV.

That your orator has not any plain, adequate and complete remedy at law.

Wherefore, your orator prays that your Honorable Court may take an accounting of the affairs of the said First National Bank of Salmon, and of the actions and conduct of its said Board of Directors in connection with the matters and things hereinbefore recited, and determine the liability of the respective defendants therefor; that, after having determined such liability, a judgment may be entered against the said defendants respectively, according to such respective liability, require them, the said defendants, to return the money so carelessly and negligently wasted and lost, and so illegally received by

them, and for such other general relief as may to your honorable Court be deemed just and equitable.

F. J. COWEN,

Residing at Salmon, Idaho.

D. WORTH CLARK,

JESSE R. S. BUDGE,

Residing at Pocatello, Idaho.

*Counsel for Complainant.*

State of Nebraska,

County of Clay.—ss.

Frank R. McCormick, being first duly sworn, deposes and says: That he is the plaintiff in the foregoing action; that he has read the foregoing bill and knows the contents thereof and that the same is true of his own knowledge, except as to those matters therein stated to be upon information or belief and as to those matters he believes it to be true.

FRANK R. McCORMICK.

Subscribed and sworn to before me this 21st day of March, 1914.

(Seal)

*Notary Public.*

My commission expires November 25, 1919.

# EXHIBIT "A."

GEORGE W. BARFIELD.

	Checks.	Balance.	Overdraft.
March 15, 1911.. . . . .		\$306.50	
March 22, 1911.. . . . .	\$301.00		
March 22, 1911.. . . . .	15.00	316.00	\$ 9.50
March 27, 1911.. . . . .	5.00	5.00	14.50



## FRED BROUGH.

	Checks.	Balance.	Overdraft.
May 17, 1911.....		\$122.81	
June 6, 1911....	\$175.00	\$175.00	\$52.19
Paid since bank closed, \$27.19.			

## HARRY BROWN.

	Checks.	Balance.	Overdraft.
Feb. 2, 1911.....		\$000.00	
March 29, 1911..	\$ 10.00		\$ 10.00
May 6, 1911.....	110.00		110.00
Paid since bank closed, \$99.75.			

## C. F. HANMER.

	Checks.	Balance.	Overdraft.
May 27, 1911.....		\$21.38	
June 2, 1911....	\$100.00	\$100.00	\$78.62
June 6, 1911....	25.00		
June 6, 1911....	23.50	48.50	127.12

## J. L. HARMON.

Jan. 7, 1911....	\$7.00		\$7.00
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## HENDERSON &amp; KENT.

	Checks.	Balance.	Overdraft.
June 25, 1910...		\$11.08	
July 2, 1910....	\$13.71		\$ 2.63
July 28, 1910....	9.95	43.66	12.58

## IDAHO COAL &amp; LAND COMPANY.

	Checks.	Balance.	Overdraft.
June 23, 1910....		\$8.52	
June 30, 1910....	\$11.25		\$ 2.73
July 26, 1910....	10.85		13.58

30      *Frank R. McCormick, Receiver, etc., vs.*

	Checks.	Balance.	Overdraft.
Aug. 3, 1910.....	5.15	.....	18.73
Nov. 3, 1910.....	195.36	.....	214.09
Dec. 5, 1910.....	31.50	.....	245.59
Dec. 29, 1910.....	4.25	.....	249.84
March 23, 1911..	1.50	.....	251.34
April 29, 1911...	10.00	.....	261.34

L. L. KENT.

	Checks.	Balance.	Overdraft.
May 21, 1910....	.....	\$28.19	.....
May 23, 1910....	\$65.65	.....	\$37.46

H. G. KING.

	Checks.	Deposits.	Balance.	O'draft.
Nov. 2, 1910...	.....	.....	\$124.78	.....
Nov. 4, 1910...	\$350.00	.....	.....	\$ 225.22
Nov. 12, 1910..	500.00	.....	.....	725.22
Nov. 14, 1910..	47.15	.....	.....	772.37
Nov. 17, 1910..	3.24	.....	.....	775.61
Nov. 18, 1910..	24.00	.....	.....	799.61
Nov. 22, 1910..	15.55	.....	.....	815.16
Nov. 23, 1910..	6.00	.....	.....	821.16
Nov. 28, 1910..	.....	200.00	.....	621.16
Nov. 29, 1910..	24.50	.....	.....	645.66
Dec. 5, 1910...	622.25	320.00	.....	947.66
	.....	15.00	.....	932.66
Dec. 6, 1910...	15.00	.....	.....	947.66
Dec. 7, 1910...	3.50	.....	.....	951.16
Dec. 8, 1910...	352.00	.....	.....	1303.16
Dec. 12, 1910..	.....	34.85	.....	1268.31
Dec. 17, 1910..	3.40	.....	.....	1271.71

	Checks.	Deposits.	Balance.	O'draft.
Dec. 21, 1910..	12.75	.....	.....	1284.46
Dec. 23, 1910..	3.00	.....	.....	1287.46
Dec. 27, 1910..	8.50	.....	.....	1295.96
Dec. 28, 1910..	.....	200.00	.....	1095.96
Dec. 29, 1910..	10.00	.....	.....	1105.96
	10.00	.....	.....	1115.96
Dec. 30, 1910..	35.00	.....	.....	1150.96
Jan. 3, 1911...	36.00	.....	.....	1186.96
Jan. 4, 1911...	24.50	.....	.....	1211.46
Jan. 5, 1911...	11.25	.....	.....	1222.71
Jan. 7, 1911...	3.00	.....	.....	1225.71
Jan. 9, 1911...	2.00	.....	.....	1227.71
Jan. 10, 1911..	88.15	.....	.....	1315.86
Jan. 11, 1911..	2.25	.....	.....	1318.11
Jan. 14, 1911..	9.18	.....	.....	1327.29
Jan. 16, 1911..	9.20	.....	.....	1336.49
Jan. 23, 1911..	.....	50.00	.....	1286.49
Jan. 26, 1911..	24.50	.....	.....	1310.99
Jan. 28, 1911..	11.00	.....	.....	1321.99
Jan. 31, 1911..	.....	225.00	.....	1096.99
Feb. 2, 1911...	30.00	.....	.....	1126.99
Feb. 6, 1911...	5.75	.....	.....	1132.74
Feb. 7, 1911...	.....	47.80	.....	1084.94
Feb. 10, 1911..	10.00	.....	.....	1094.94
Feb. 11, 1911..	3.50	.....	.....	1098.44
Feb. 13, 1911..	208.75	.....	.....	1307.19
Feb. 16, 1911..	17.00	.....	.....	1324.19
Feb. 17, 1911..	.....	203.94	.....	1120.25
Feb. 18, 1911..	464.85	.....	.....	1585.10
Feb. 20, 1911..	3.50	.....	.....	1588.60

	Checks.	Deposits.	Balance.	O'draft.
Feb. 21, 1911..	22.25	.....	.....	1610.85
Feb. 23, 1911..	208.00	.....	.....	1818.85
Feb. 25, 1911..	3.50	.....	.....	1822.35
Feb. 27, 1911..	.....	225.00	.....	1597.35
Feb. 28, 1911..	34.25	.....	.....	1631.60
March 3, 1911.	2.25	.....	.....	1633.85
March 4, 1911.	76.00	.....	.....	1709.85
March 6, 1911.	19.00	.....	.....	1728.85
March 14, 1911	50.00	15.00	.....	1763.85
March 15, 1911	15.00	.....	.....	1778.85
March 17, 1911	50.00	.....	.....	1828.85
March 18, 1911	.60	.....	.....	1829.45
March 20, 1911	2.25	.....	.....	1831.70
March 23, 1911	51.00	.....	.....	1882.70
March 27, 1911	32.60	.....	.....	1915.30
March 31, 1911	450.05	225.00	.....	2140.35
March 31, 1911	.....	1000.00	.....	1140.35
April 4, 1911..	5.00	.....	.....	1145.35
April 5, 1911..	2.00	.....	.....	1147.35
April 10, 1911..	.....	25.00	.....	1122.35
April 13, 1911..	53.00	.....	.....	1175.35
April 15, 1911..	2.25	.....	.....	1177.60
April 17, 1911..	3.00	.....	.....	1180.60
April 19, 1911..	2.10	.....	.....	1182.70
April 20, 1911..	36.50	.....	.....	1219.20
April 21, 1911..	25.70	.....	.....	1244.90
April 22, 1911..	15.00	.....	.....	1259.90
April 25, 1911..	1.00	.....	.....	1260.90
April 29, 1911..	170.65	225.00	.....	1206.55
May 1, 1911...	17.85	.....	.....	1224.40

	Checks.	Deposits.	Balance.	O'draft.
May 3, 1911...	10.00	.....	.....	1234.40
May 4, 1911...	25.00	250.00	.....	1009.40
May 5, 1911...	1.00	.....	.....	1010.40
May 6, 1911...	6.50	.....	.....	1016.90
May 9, 1911...	.....	500.00	.....	.....
	.....	100.00	.....	416.90
May 10, 1911..	255.00	.....	.....	671.90
May 13, 1911..	5.00	.....	.....	676.90
May 15, 1911..	.....	400.00	.....	276.90
May 17, 1911..	100.00	.....	.....	376.90
May 18, 1911..	170.57	.....	.....	547.47
May 19, 1911..	25.00	.....	.....	572.47
May 31, 1911..	12.00	225.00	.....	359.47
June 2, 1911...	4.00	.....	.....	363.47
June 5, 1911...	225.45	.....	.....	588.92

GEO. LEABO.

	Checks.	Deposits.	Balance.	O'draft.
Nov. 3, 1910...	.....	.....	.....	.....
Nov. 28, 1910..	521.00	.....	.....	521.00
Feb. 2, 1911...	.....	487.20	.....	33.80

JOHN LOTTRIDGE.

	Checks.	Deposits.	Balance.	O'draft.
June 2, 1911...	.....	.....	\$41.99	.....
June 2, 1911...	\$150.00	.....	.....	\$108.01
June 5, 1911...	5.00	.....	.....	113.01
June 7, 1911...	451.39	.....	.....	564.40
Paid, 10-4-11, \$110.78; 1-9-13, \$74.50.				

## ALLEN C. MERRITT.

	Checks.	Deposits.	Balance.	O'draft.
March 18, 1910 .....			\$7.22 .....	
March 22, 1910	\$12.50 .....			\$5.28
March 25, 1910	750.00 .....			755.28
March 28, 1910	21.00 .....			776.28
April 5, 1910..	10.00	\$140.00 .....		646.28
April 6, 1910..	100.00 .....			746.28
April 9, 1910..	20.50 .....			766.78
April 21, 1910..	12.50 .....			779.28
April 30, 1910..	1.00 .....			780.28
May 2, 1910...		60.00 .....		720.28
May 4, 1910...	30.00 .....			750.28
May 7, 1910...	10.00 .....			760.28
May 9, 1910...	27.00 .....			787.28
May 11, 1910..	10.00 .....			797.28
May 21, 1910..	12.50 .....			809.78
June 22, 1910..	12.50 .....			822.28
June 30, 1910..	36.45 .....			858.73
July 26, 1910..	12.50 .....			871.23
August 22, 1910	12.50 .....			883.73
Sept. 21, 1910..	12.50 .....			896.23
Oct. 22, 1910...	12.50 .....			908.73
Nov. 29, 1910..	12.50 .....			921.23
Dec. 29, 1910..	41.00 .....			962.23
Jan. 4, 1911...	12.50 .....			974.23
Jan. 26, 1911..	12.50 .....			987.23
Feb. 23, 1911...	12.50 .....			999.23
March 23, 1911	12.50 .....			1012.23
April 21, 1911..	12.50	25.98 .....		998.75

Paid since closing, 9-28-11, \$124.25.

## E. E. MINERT.

Checks. Deposits. Balance. O'draft.

May 8, 1911...	.....	\$4.55	.....
May 8, 1911...	\$7.00	.....	\$2.45

## K. H. MORSE.

Checks. Deposits. Balance. O'draft.

May 6, 1911...	.....	\$24.35	.....
May 8, 1911...	\$31.75	.....	\$7.40
May 9, 1911...	38.00	40.00	5.40
May 10, 1911..	38.35	42.35	1.40
May 15, 1911..	19.00	.....	20.40
May 22, 1911..	.....	10.00	10.40
May 29, 1911..	8.90	.....	19.30
June 1, 1911...	.....	9.00	10.30

## SALMON LAND &amp; MINES CO.

Checks. Deposits. Balance. O'draft.

June 2, 1910...	.....	\$6.12	.....
June 4, 1910...	\$69.75	.....	\$63.60
Aug. 16, 1910..	46.75	.....	110.38
Oct. 18, 1910...	\$37.50	.....	72.88
Oct. 24, 1910...	29.00	.....	101.88
Nov. 17, 1910..	37.50	.....	139.38
Dec. 29, 1910..	6.50	.....	145.88

## W. W. SCHULTZ.

Checks. Deposits. Balance. O'draft.

March 15, 1911.	.....	\$6.07	.....
March 31, 1911.	\$451.39	.....	\$445.32
April 15, 1911..	5.00	.....	450.32
April 17, 1911..	2.00	.....	452.32
April 18, 1911..	6.50	.....	458.32
June 7, 1911...	.....	\$451.39	7.43



BERT SIMERS.

	Checks.	Deposits.	Balance.	O'draft.
Jan. 31, 1911...			\$1.03	.....
Feb. 1, 1911...	\$55.00			\$ 53.97
Feb. 3, 1911...	3.75			90.72
Feb. 6, 1911...	32.25			122.97
Feb. 8, 1911...	1.00			123.97
Feb. 28, 1911..	1.90	\$62.50		63.35
March 1, 1911..	43.60			106.95
March 2, 1911..	8.45			115.40
March 6, 1911..	3.00			118.40
March 7, 1911..	1.00			119.40
March 14, 1911. ....		33.50		85.90
March 15, 1911.	1.00			86.90
March 16, 1911.	10.00			96.90
March 17, 1911.	1.00			97.90
March 22, 1911.	5.00			102.90
March 24, 1911.	1.05			103.95
March 27, 1911.	20.00			123.95
May 1, 1911....	1.85			125.80

Z. T. VINCENT.

	Checks.	Deposits.	Balance.	O'draft.
May 27, 1911..			\$3.49	.....
May 29, 1911..	\$13.88			\$10.39
May 31, 1911..	12.66			23.05
June 1, 1911...	39.33			62.38
June 3, 1911...		\$10.00		52.38

JOHN R. WHEELER.

	Checks.	Deposits.	Balance.	O'draft.
Jan. 26, 1911..			\$758.29	.....
Feb. 6, 1911..	\$1274.16			\$515.87



	Checks.	Deposits.	Balance.	O'draft.
March 4, 1911..	150.00	.....	.....	665.87
March 31, 1911..	51.00	.....	.....	716.87
April 15, 1911..	.....	\$80.00	.....	636.87
April 22, 1911..	2.00	75.00	.....	563.87
April 25, 1911..	45.33	.....	.....	609.20
April 26, 1911..	4.00	.....	.....	613.20
April 27, 1911..	6.00	.....	.....	619.20
April 29, 1911..	5.90	.....	.....	625.10
May 1, 1911...	20.35	.....	.....	645.45
May 2, 1911...	2.50	.....	.....	647.95
May 6, 1911...	3.00	.....	.....	650.95
May 8, 1911...	5.00	.....	.....	655.95
May 16, 1911..	12.00	.....	.....	667.95
May 17, 1911..	179.36	.....	.....	847.31
	4.65	572.70	.....	279.26
June 13, 1911..	572.70	.....	.....	851.96

MYRA L. WHEELER.

	Checks.	Deposits.	Balance.	O'draft.
May 3, 1911...	.....	.....	\$6.15	.....
May 4, 1911...	\$10.00	.....	.....	\$3.85
May 11, 1911..	7.90	.....	.....	11.75
May 18, 1911..	2.00	.....	.....	13.75
May 27, 1911..	4.50	.....	.....	18.25
May 29, 1911..	1.50	.....	.....	19.75

JOS. G. WICKLUND.

	Checks.	Deposits.	Balance.	O'draft.
April 3, 1911...	.....	.....	\$70.61	.....
April 6, 1911...	\$148.49	.....	.....	\$ 77.88
April 11, 1911..	41.45	.....	.....	119.33

	Checks.	Deposits.	Balance.	O'draft.
April 17, 1911..	10.00	.....	.....	129.33
April 29, 1911..	11.85	.....	.....	141.18

## FRED CARL.

	Checks.	Deposits.	Balance.	O'draft.
May 1, 1911....	.....	.....	\$44.15	.....
May 6, 1911....	\$50.65	.....	.....	\$ 6.50
May 8, 1911....	199.55	.....	.....	206.05
May 22, 1911..	4.75	.....	.....	210.80
June 3, 1911....	101.75	.....	.....	312.55
June 5, 1911....	52.40	.....	.....	364.95

## ELIZABETH McCLUNG.

	Checks.	Deposits.	Balance.	O'draft.
Jan. 30, 1911..	.....	.....	\$5.58	.....
Feb. 15, 1911..	\$5.90	.....	.....	\$ .32
April 15, 1911..	1.50	.....	.....	1.82

## W. H. O'BRIEN.

	Checks.	Deposits.	Balance.	O'draft.
March 8, 1911..	.....	.....	\$1.31	.....
April 7, 1911..	\$5.00	.....	.....	\$3.69

## F. M. POLLARD.

	Checks.	Deposits.	Balance.	O'draft.
Jan. 18, 1911....	.....	.....	\$285.04	.....
Feb. 8, 1911....	\$397.50	.....	.....	\$112.46
April 13, 1911..	.....	\$5.00	.....	107.46
April 14, 1911..	5.00	.....	.....	112.46

\$90 paid since bank closed.

Endorsed: Filed March 25, 1914. A. L. Richardson, Clerk.

*In the District Court of the United States for the  
District of Idaho, Eastern Division.*

FRANK R. McCORMICK, as Receiver of the First  
National Bank of Salmon, a Corporation,  
*Plaintiff,*

vs.

HARRY G. KING, et al., *Defendants.*

ANSWER OF DEFENDANT, GUY E. BOWER-  
MAN, TO THE FOURTH AMENDED BILL OF  
COMPLAINT, FILED HEREIN.

This defendant, now and at all times saving and reserving unto himself all benefit and advantage of exception to the many errors, uncertainties, imperfections and insufficiencies in the complainant's said fourth amended bill of complaint contained, for answer thereto, or to so much and such parts thereof as this defendant is advised is material or necessary for him to make answer to, answering says:

I.

Admits the allegations contained in paragraph I of said fourth amended bill of complaint.

II.

Admits all the allegations contained in paragraph II of said fourth amended bill of complaint, except the allegation that the Directors of the said bank created a surplus fund on the books of said bank of \$5,000.00 on or about the 9th day of July, 1910; and this defendant does not know and has not been informed, save by said fourth amended bill of complaint, whether the said bank created such surplus

funds on the books of said bank, and therefore this defendant leaves the said plaintiff to make such proof thereof as he may be advised is necessary or proper. And this defendant alleges the fact to be that he was not a director of said bank on the said 9th day of July, 1910, and had nothing to do with and knew nothing of creating such alleged surplus of \$5,000.00 on the books of said bank on or about the 9th day of July, 1910.

### III.

Admits that for the purpose of enabling the said bank to pay its debts and obligations the Honorable Comptroller of Currency on or about the 11th day of January, 1912, levied an assessment and requisition upon the shareholders of said First National Bank of Salmon to the full face or par value of the shares of stock of said bank, held by each of the said shareholders, respectively, and amounting in all to the sum of \$50,000. But as to how much of the same has been paid into the hands of the Receiver and how much the said Receiver will be unable to collect, this defendant does not know and has not been informed, save by the said fourth amended bill of complaint, whether or not the sum of \$20,000.00 of such amount has been paid into the hands of the said Receiver, or that, owing to the insolvency of a number of said shareholders, the said Receiver will be unable to collect approximately the sum of \$20,000.00 of such assessment, or that after realizing upon all of the assets of said bank now

available, or applying the same to the debts and obligations thereof that a deficiency of approximately the sum of \$20,000.00 of unpaid obligations will remain, this defendant leaves the said plaintiff to make such proof thereof as he may be advised is necessary or proper.

#### IV.

Admits that this defendant, Guy E. Bowerman, was duly elected and qualified, and thereupon became a duly qualified member of the Board of Directors of said bank at the time of its organization. But this defendant denies that he continued as such Director until the same was placed in the hands of a Receiver, but alleges the fact to be that this defendant was not a member of the said Board of Directors and did not act as a Director of said bank after about the first day of July, 1910.

#### V.

Denies that this defendant, Guy E. Bowerman, during the term of service as a director of said bank, or at any other time or at all, knowingly permitted or assented to the making of any loan or loans by any officer or officers, agent or agents, or servant or servants of the said First National Bank of Salmon, far or otherwise in excess of the limit provided by Section 5200 of the Revised Statutes of the United States, whereby, or otherwise, large or any sum or sums of money belonging to the stockholders or depositors, or any of them, of said bank became wasted or lost. Denies that on or about the 15th day of



February, 1910, or at any other time or at all, the said defendant Guy E. Bowerman knowingly permitted or assented to the making of any loan or loans to the Salmon Lumber Company of any amount or nature, and especially either or any of the loans set out and contained in subdivision (a) of paragraph V of said fourth amended bill of complaint. Denies that this defendant, Guy E. Bowerman, knowingly permitted or assented to the making of any loan or loans to F. M. Pollard or S. A. Pollard, husband and wife, in any amount of any kind or nature, either as set out and contained in subdivision (b) of paragraph V of said fourth amended bill of complaint, or otherwise. Denies that the defendant, Guy E. Bowerman, knowingly permitted or assented to the making of any loan or loans to Harry Brown in any amount or of any kind or nature or either or any of the loans set out in subdivision (c) of paragraph V of said fourth amended bill of complaint, or otherwise.

## VI.

Denies that the defendant, Guy E. Bowerman, from the time of the organization of said bank on the 13th day of January, 1906, until the 8th day of June, 1911, when the said bank suspended business, carelessly or wilfully or negligently failed or neglected to attend any meetings of the Board of Directors of said bank during the entire, or any, period of his incumbency as Director, or wilfully or carelessly or negligently failed during said entire, or any, period to discharge his duty or duties or obligation or obligations as a member of the Board of Directors of said

bank in examining into or keeping well, or otherwise, informed concerning the affairs of such bank, or particularly the loans or any of them which were being made by said bank, or wilfully or carelessly or negligently during the alleged or any period failed to exercise proper or other or any supervisory authority, as such Director, over said bank's affairs, or any of them. Denies that this defendant, Guy E. Bowerman, was a Director of said bank after the first day of July, 1910. Denies that during the, or any, period when the affairs of said bank are alleged to have been grossly or otherwise mismanaged, or particularly during the period when the alleged excessive loans, or any of them, were made, this defendant had any knowledge from the published or other statements of said bank, required to be furnished by the Comptroller of Currency, or otherwise, or from other sources, that the affairs of said bank were being grossly or otherwise mismanaged, or that excessive or illegal loans were being made, or that the said defendant Bowerman carelessly or negligently or wilfully permitted or allowed the said King or Lottridge, or any other person or persons, to make such or any loan or loans, or particularly the alleged loan to the said Salmon Lumber Company, or F. M. Pollard or S. A. Pollard, or Harry Brown, as alleged in said fourth amended bill of complaint, or otherwise, whereby the funds or any of them of said bank became lost, as set forth in said fourth amended bill of complaint, or otherwise.

## VII.

As to the allegations contained in paragraph VIII of said fourth amended bill of complaint, that the said Salmon Lumber Company during the time said alleged excessive loans were being made to it became insolvent and was thereafter compelled to suspend business, with assets insufficient to satisfy and discharge its liabilities, that no part of the money so loaned to said Lumber Company by said bank has ever been repaid to said bank, except the sum of \$2,360.00 and the further sum of \$1500.00, or that a loss will result to said First National Bank on account of said loans of approximately \$10,000.00, this defendant does not know and has not been informed, save by the said fourth amended bill of complaint, and therefore leaves the said complainant to make such proof thereof as he may be advised is necessary or proper. As to the further allegation contained in paragraph VIII of said fourth amended bill of complaint, that no part of the alleged \$7,950.00 loaned to said F. M. Pollard and S. A. Pollard was ever repaid by them to said bank, or that although judgment has been recovered on said notes, so executed by said Pollard, the same remains unsatisfied except for a credit of \$150.00, or that the balance of the money so loaned to said Pollards will be lost to the said bank, this defendant does not know and has not been informed, save by said fourth amended bill of complaint, and therefore leaves the said complainant to make such proof thereof as he may be advised is necessary and proper.

And as to the further allegation contained in said paragraph VIII of said fourth amended bill of complaint, that the said Harry Brown is insolvent, or, although he has turned over to said plaintiff all his available assets, no more than approximately \$2,000.00 will be realized therefrom, or that the balance of said alleged excessive loans so made to him, in said fourth amended bill set forth, will be lost to said bank, this defendant does not know and has not been informed, save by said fourth amended bill of complaint and therefore leaves the said complainant to make such proof thereof as he may be advised is necessary and proper.

#### VIII.

Denies that at the beginning of the year 1909, or at any other time or at all, this defendant, Guy E. Bowerman, as a member of the Board of Directors of said bank, or otherwise, entered upon or participated in a careless or negligent management of the affairs, or any of them, of said bank. Denies that on or about the month of March, 1909, or at any other time or at all, the said Board of Directors without protest from or with the knowledge of this defendant, Guy E. Bowerman, negligently or carelessly or without due or any regard to the rights, or any of them, of the stockholders, or any of them, of said First National Bank of Salmon, purchased all or any of the assets of a rival bank in said town of Salmon, to-wit: The Bank of Langsdorf & Company, paying therefor the sum of \$14,500.00 over or above the par or face value of the assets thereof, or also or



otherwise \$14,500.00 over or above the true value of the assets of said bank, and denies that all, or any, of which was at the time of said purchase well or otherwise known to this defendant, Guy E. Bowerman, or should have been known to the said Guy E. Bowerman, if he had used proper or any care or diligence in determining the value of said assets at or prior to the time of said purchase. Denies that by reason of any negligence or carelessness of this defendant, Guy E. Bowerman, in not ascertaining the true value of said assets, or otherwise, or in paying therefor out of the funds of said First National Bank of Salmon the sum of \$14,500.00, or any other sum in excess of the true value thereof, the money, or any part thereof, of the stockholders of said First National Bank of Salmon became thereby or otherwise lost or negligently or otherwise wasted to approximately the sum of \$14,500.00, or any other sum. And this defendant, Guy E. Bowerman, alleges that he did use all proper care and diligence in his power in regard to the purchase of the alleged bank of Langsdorf & Company, and denies that he was guilty of any negligence or carelessness in respect thereto; denies that he consented to the payment therefor, or that he paid therefor out of the funds, or any of them, of said First National Bank of Salmon, the sum of \$14,500.00, or any other sum, or in any other thing or at all, in excess of the true value thereof.

#### IX.

Denies that the defendant, Guy E. Bowerman, during his term of office as a Director of said bank, or at



any other time or at all, wilfully or carelessly or negligently failed to properly or otherwise manage or conduct the affairs, or any of them, of said bank, or wilfully or carelessly allowed the same to be grossly or otherwise mismanaged, whereby or otherwise the assets or any of them of said bank were wasted or lost.

### X.

This defendant, Guy E. Bowerman, alleges that if between the first day of January, 1910, and the failure of said bank on the 8th day of June, 1911, the said defendant, Harry G. King, as President, and John Lottridge, as Cashier, of such bank, carelessly or negligently loaned the funds, or any of them, of said bank to various persons or companies upon insufficient or no security, or to various other persons or companies not having sufficient assets with which to repay the same, whereby large or any sums of money belonging to the depositors or stockholders of said bank became lost or wasted, or carelessly or negligently or wilfully made large or other loans of the funds of said bank to the officers thereof, or to companies in which some of said officers were interested, or which alleged loans or any of them made as alleged in said bill or otherwise, were far or otherwise in excess of any amount justified by the financial standing of the persons or companies to whom said loans or any of them were made, or carelessly or negligently or wilfully, or in direct or other violation of the by-laws, or any of them, of said bank permitted the money or funds or any part thereof of said

bank to be paid out upon checks or orders, or otherwise, or various persons or companies that did not have sufficient or any funds in such bank with which to pay such checks or orders, whereby large or any sum or sums of money of said stockholders or depositors became wasted or lost, as alleged in paragraph X of said fourth amended bill of complaint, or particularly those loans referred to in subdivisions (a), (b) and (c) of said paragraph X of said fourth amended bill of complaint, the same was done by the said defendants King and Lottridge without the assent, permission or knowledge of the defendant, Guy E. Bowerman, and against his will and over his protest.

## XI.

This defendant, Guy E. Bowerman, denies that during the time he was a Director of said bank, or at any other time or at all, he wilfully or carelessly or negligently failed or neglected to attend any of the meetings of the Board of Directors of said bank, or negligently or carelessly or wilfully failed during the time when such alleged wrongful acts, or any of them, were committed, or at any other time, to examine the books or records, or any of them, of said bank to ascertain said bank's condition or to ascertain the amount of overdrafts or loans, or any of them, allowed or made to various or any patron or patrons of said bank; or wilfully or carelessly or negligently failed during the long, or any period, when such alleged mismanagement, or at any other time, was going on to exercise as such Director, or otherwise, proper or any supervisory authority of said

bank's affairs, or any of them, whereby or otherwise said loss, or any loss, might or could have been prevented or avoided. Denies that this defendant, Guy E. Bowerman, had any knowledge of any kind or nature that the affairs or any of them of said bank were being grossly or otherwise mismanaged, or had any knowledge that excessive or illegal loans were being made to various or any person or persons or company or companies, or that the defendant carelessly or negligently or wilfully permitted or allowed the said King or Lottridge, or any other person or persons, to make said excessive or illegal loans, or any of them, as alleged in said bill or otherwise, whereby or otherwise the funds, or any of them, belonging to the stockholders or depositors of said bank became lost or wasted, as alleged, or otherwise.

## XII.

Denies that on the 9th day of June, 1910, or at any other time or at all, owing to any careless or negligent conduct or wrongful or illegal act or acts of the defendant, Guy E. Bowerman, as set forth in said fourth amended bill of complaint, or otherwise, during the time this defendant, Guy E. Bowerman, was a Director of the said bank, or at any other time or at all, the capital or surplus of said bank had become much or otherwise impaired, or the value of the assets, or any of them, of said bank greatly or otherwise depreciated. Denies that this said defendant, Guy E. Bowerman, wilfully or knowingly or wrongfully assented to the declaring of a dividend out of the available assets of such bank in the sum of \$2,500.00,

or any other sum, or wilfully or knowingly accepted his proportion of said dividend. Denies that the defendant, Guy E. Bowerman, in violation of law or otherwise, knowingly or carelessly or negligently permitted or assented to the carrying of the sum of \$4500.00, or any other sum, to the surplus account of said bank, thus or otherwise showing on the alleged books, or any of them, the right to make any loan in excess of the amount which could have been legally loaned had the books, or any of them, shown the true condition of the affairs of said bank. Denies that the said Guy E. Bowerman wilfully or knowingly accepted his proportion, or any proportion of said alleged dividend, or with knowledge that the said bank was being mismanaged or that large or excessive or other loans were being made in violation of his oath as such Director, or otherwise, or without exercising proper or any supervisory control over the affairs of any of them of said bank, which as Director of said bank he was in duty bound to do, or otherwise; and denies that the said Guy E. Bowerman wilfully or carelessly or negligently permitted the said dividend or any dividend to be declared, or the alleged sum of \$5,000.00 or any other sum to be carried to the surplus or other account of said bank, as alleged in said fourth amended complaint, or otherwise.

### XIII.

Denies that at the time of the closing of said bank, or at any other time, the said defendant, Guy E. Bowerman, during his term as Director of such



bank, or at any other time, in violation of the or any by-laws of said bank, or in violation of his duty as a Director of said bank association, carelessly or negligently failed to supervise the affairs, or any of them, of said bank, or permitted to be paid checks or orders drawn on said bank by persons or companies not having any funds on deposit in such bank with which to pay the same, to the extent of \$9,800.-00, or any other sum, or that many or any of the persons who made such overdrafts were insolvent, or have been or now are unable to repay the money, or any part thereof, so drawn out, or as a result thereof a large or any amount of the money alleged to be so paid will be lost to the said bank. Denies that if the defendant, Guy E. Bowerman, had performed his duty or duties as a Director of such bank, or supervised the affairs or any of them of said bank, he would have known that said overdrafts, or any of them, were being permitted or would have stopped the same or said losses, or any part thereof, would not have occurred. But, on the contrary, this defendant alleges that this defendant, Guy E. Bowerman, did perform his duty as a Director of said bank during the time he was such Director, and did supervise the affairs thereof as best he could under the circumstances.

#### XIV.

As to the allegation contained in paragraph XIV of said fourth amended bill of complaint, that the loss which will result to the said bank on account of the said excessive loans will reach a probable amount



of \$20,000.00, or that the losses which will result to such bank from the alleged overdrafts will reach the probable amount of \$4,000.00 or more, or that the losses which will result to such bank from the declaration of the alleged illegal dividend will reach the amount of \$2,500.00, or that all such losses are directly caused by the careless or negligent handling of the funds, or the mismanagement of the affairs of said bank, or the wilful neglect of this defendant, Guy E. Bowerman, as a Director of said institution, as alleged in said fourth amended bill of complaint, this defendant does not know and has not been informed, save by said fourth amended bill of complaint, and therefore demands strict proof of the same.

### XV.

Denies that the complainant has not a plain, adequate and complete remedy at law.

For a further answer and defense, this defendant, Guy E. Bowerman, alleges as follows:

That at the time of the organization of the First National Bank of Salmon the defendant, Guy E. Bowerman, was elected a Director of said bank by the stockholders of the same, and he immediately qualified and took the oath of office as a Director of said bank; that at the time of his election and qualification as a Director of said bank he was residing at St. Anthony, in Fremont County, State of Idaho, quite a long distance from Salmon City, Lemhi County, State of Idaho, where the said First National

Bank of Salmon was situated, and it was very difficult at said time to reach said Salmon City by reason of the inadequate transportation facilities then existing between St. Anthony and said Salmon City; that no provision was ever made by either the stockholders or directors of said bank for paying this defendant for his time or expenses in going to and from St. Anthony to Salmon City to attend the meetings of the Board of Directors of said bank.

That it was understood at the time this defendant was elected a director of such bank by the stockholders, who elected him such director, that this defendant, by reason of his residing at St. Anthony so far away from Salmon City, and because of the inadequate transportation facilities then existing between St. Anthony and the said Salmon City, and because of the amount of business that this defendant had upon his hands at such time, that this defendant was not to and could not take an active part in the control or management of the affairs of said bank, but was to lend only such assistance as he could under such conditions and circumstances and at such distance as he was located from the place of business of said bank, and that the actual control and management of the business of said bank was to be entrusted to the care and supervision of the officers and agents of said bank residing at Salmon City, State of Idaho; and with this understanding and not otherwise, this defendant consented to become a Director of said bank, and qualified as such and gave the affairs and management of said bank as much supervision, con-

trol and attention as it was possible for him to do, considering his time, health, and the distance that he was located from the place of business of said bank, and the difficulty in going to and from Salmon City to St. Anthony at that time; and that the affairs of said bank and the business of such bank were properly conducted and well managed, so far as this defendant could learn or was able to tell, and that the said bank was doing a good and prosperous business until some time during the early part of the year 1910, at which time the affairs and business of said bank were not being conducted in a right or proper manner and in accordance with the ideas of this defendant as to how a banking business should be managed and conducted as near as this defendant could learn at that time; that this defendant remonstrated with Harry G. King, President of said bank, in regard to the manner in which the affairs and business of said bank were being conducted and refused to approve of certain things that had been done and were then being done; that when his advice, protests, suggestions and demands were unheeded and the said President and other officers of said bank refused to heed or follow the same, this defendant then tendered his resignation as a Director of said bank to the said President, Harry G. King, and refused to continue to serve as a Director of said bank any longer or further; and that on or about the . . . day of January, 1911, after this defendant had so tendered his resignation as a Director of said bank and refused to serve any longer as a Director thereof, the stockhold-

ers of said bank at their annual meeting elected this defendant a Director of the same again, but the same was done during the absence of this defendant and without his knowledge or consent; that when this defendant was notified of his election as such Director and a blank oath was sent him for his qualification as such Director this defendant positively refused to qualify or act as a Director of such bank, and this defendant has not been a Director of said bank since about the first day of July, 1910.

Wherefore, this defendant prays that the plaintiff take nothing by his fourth amended bill of complaint, and that this action be dismissed as against this defendant, Guy E. Bowerman, and that this defendant have judgment against the plaintiff for his costs in this action expended, and for such other and further relief as to this Honorable Court may seem just and meet in the premises and agreeable to equity.

GUY E. BOWERMAN, Defendant.

By Millsaps & Moon,

Residence: St. Anthony, Idaho.

Richards & Haga,

Residence: Boise, Idaho.

*Attorneys for Defendant, Guy E. Bowerman.*

State of Idaho,

County of Ada,—ss.

J. H. Richards, being first duly sworn, deposes and says: That he is one of the counsel of record on behalf of the defendant, Guy E. Bowerman, and that the said defendant, Guy E. Bowerman, is absent from Ada County, State of Idaho, where this affiant



resides, and by reason of which this affiant makes this verification; that this affiant has read the foregoing answer to plaintiff's fourth amended bill of complaint and knows the contents thereof, and that he believes the same to be true.

J. H. RICHARDS.

Subscribed and sworn to before me this 23rd day of September, 1914.

EDNA L. HICE,

(Seal)

*Notary Public.*

Endorsed: Filed September 24, 1914.

A. L. Richardson, Clerk.

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*In the District Court of the United States for the  
District of Idaho, Eastern Division.*

IN EQUITY—No. 161.

FRANK R. McCORMICK, as Receiver of the First  
National Bank of Salmon, a Corporation,  
*Plaintiff,*

VS.

HARRY G. KING, et al., *Defendants.*

AMENDMENT TO ANSWER OF DEFENDANT,  
GUY E. BOWERMAN.

Comes now the above-named defendant, Guy E. Bowerman, by leave of Court first had and obtained, and files this amendment to the answer of said defendant Guy E. Bowerman, heretofore filed herein, and for a further and separate defense to the allegations contained in the fourth amended bill of complaint of the plaintiff, filed herein, alleges:



I.

That on or about the 30th day of January, 1911, the First National Bank of Salmon, Idaho, procured a bond in favor of all depositors and other creditors of said bank guaranteeing the payment to the several depositors and other creditors of said bank of any net balance owing to them by such bank upon the suspension of such bank, as will more fully appear from a copy of said bond hereto attached, marked Exhibit "A" and made a part hereof.

II.

That on or about the 7th day of June, 1911, the said First National Bank of Salmon, Idaho, suspended and closed its doors.

III.

That the plaintiff herein was, on or about the 12th day of September, 1911, duly appointed Receiver of such bank, and ever since has been and now is the duly appointed, qualified and acting Receiver of said bank.

IV.

That on or about the 18th day of May, 1912, one A. C. Amonson, in his own behalf and in behalf of all depositors and other creditors of said bank, brought an action in the District Court of the Third Judicial District of the State of Idaho, in and for Ada County, against the American Bankers Assurance Company to recover from such company the said net balance owing to each of such depositors and

other creditors by said bank at the time of such suspension, as will more fully appear from a copy of the complaint filed in such action, attached hereto, marked Exhibit "B" and made a part hereof.

#### V.

That subsequently to the bringing of such action, and on the petition of the said American Bankers Assurance Company, such action was removed to this Court, as will more fully appear from Exhibit "E," attached hereto, and hereinafter referred to.

#### VI.

That on or about the 30th day of December, 1912, the answer on behalf of the said American Bankers Assurance Company to the said complaint (Exhibit "B") was filed in this Court, a copy of which answer is attached hereto, marked Exhibit "C" and made a part hereof.

#### VII.

That the said plaintiff herein was a party to said action so commenced by the said A. C. Amonson, as above stated, and as such party joined with the said A. C. Amonson in an application to this Court for an order authorizing a compromise of such action on behalf of the said depositors and other creditors and a release by such depositors and other creditors of such American Bankers Assurance Company from all further liability upon such bond, as will more fully appear from a copy of such application attached hereto, marked Exhibit "D" and made a part hereof.

## VIII.

That subsequently such proceedings were had in such action that on the 9th day of May, 1913, this Court rendered a decree therein authorizing such compromise and a release of the said American Bankers Assurance Company from further liability under such bond to the said depositors and other creditors of said First National Bank of Salmon, Idaho, as will more fully appear from a copy of such decree attached hereto, marked Exhibit "E" and made a part hereof.

## IX.

That by reason of the foregoing the said plaintiff, as the representative of the said depositors and other creditors of said bank, is estopped from proceeding further against this defendant herein.

Wherefore, this defendant prays, as heretofore prayed in the answer of said defendant, Guy E. Bowerman, to which this is an amendment, that the plaintiff take nothing by his fourth amended bill of complaint, and that this action be dismissed as against this defendant, Guy E. Bowerman, and that this defendant have judgment against the plaintiff for his costs in this action expended, and for such other and further relief as to this honorable Court may seem just and meet in the premises and agreeable to equity.

GUY E. BOWERMAN, Defendant.

By Millsaps & Moon,

Residence: St. Anthony, Idaho.

Richards & Haga,

Residence: Boise, Idaho.

*Attorneys for Defendant, Guy E. Bowerman.*

United States of America,  
District of Idaho,  
County of Ada,—ss.

J. H. Richards, being first duly sworn, deposes and says: That he is one of the counsel of record on behalf of the defendant, Guy E. Bowerman, and that the said defendant, Guy E. Bowerman, is absent from Ada County, State of Idaho, where this affiant resides, and by reason of which this affiant makes this verification; that this affiant has read the foregoing amendment to answer of said defendant to plaintiff's fourth amended bill of complaint and knows the contents thereof, and that he believes the same to be true.

J. H. RICHARDS.

Subscribed and sworn to before me this 11th day of December, 1914.

EDNA L. HICE,

(Seal)

*Notary Public.*

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EXHIBIT "A."

Number 122

\$320,000.00

AMERICAN BANKERS ASSURANCE  
COMPANY

Copyright, 1910, John B. Christensen.

By these presents, in consideration of the sum of \$800, premium paid for the execution of this bond, receipt of which is hereby acknowledged, AGREES TO PAY UPON DEMAND at its office in the City of Dover, Delaware, TO ALL DEPOSITORS AND OTHER CREDITORS OF

FIRST NATIONAL BANK

of Salmon, in the State of Idaho, herein called the

“Bank,” THE NET BALANCE OWING TO SUCH DEPOSITORS AND CREDITORS as the same becomes due.

PAYMENT, TO THE SEVERAL DEPOSITORS AND CREDITORS, WILL BE MADE UPON RECEIPT OF SATISFACTORY PROOF OF THE NET SUMS DUE, accompanied by proof that said Bank has suspended payment or is unable to meet the demands of its creditors in due course of business. Each depositor or creditor shall accompany said proof with an assignment and transfer of any and all claims, which he holds against said bank to the AMERICAN BANKERS ASSURANCE COMPANY, together with any evidence of such indebtedness which he may have or control. After delivery of proof and assignment as above provided for, said company shall have the right (unless fully satisfied as to the justness and validity of all claims presented) to Ninety Days time in which to make investigation as to the amount and validity of all claims, and during such period no depositor or creditor shall have any right of action.

THE SUM DUE from the Assurance Company to each depositor or creditor shall, except as herein provided, be the net balance owing to him by the bank, after deducting from his claim, the total sum of any and all indebtedness of every character, whatsoever, owing by such depositor or creditor to said bank and if such depositor or creditor shall be a stockholder of said bank such deduction shall include the amount of any unpaid stock subscription or stockholders' liability owing by him to such bank.



CLAIMS OF DEPOSITORS or creditors must be presented to the American Bankers Assurance Company, as above provided, within three months after suspension of payment by said bank, and there shall be no liability whatever upon the said Company for any claim not so presented.

There shall be no liability under this bond for any indebtedness due to any officer or *direction* of said bank, nor for any indebtedness fraudulently contracted if the claimant, or any of those under whom he claims has participated in such fraud.

THE TOTAL LIABILITY of the undersigned Company under this bond shall in no event exceed the SUM OF THREE HUNDRED TWENTY THOUSAND AND NO-100 DOLLARS.

If claims are established in excess of total liability above stated, the sum for which the undersigned Company is liable shall be *pro rated* among the several depositors and creditors. There shall be no liability under this bond in favor of any single depositor or creditor in an amount exceeding the sum of thirty thousand dollars, nor in favor of any depositor or creditor who has taken any special bond or security other than the security herein provided, nor shall any right of contribution or subrogation or other recourse exist in favor of any person or corporation against the undersigned Company, by reason of any depository bond or other security given or provided by any such persons or corporations except the AMERICAN BANKERS ASSURANCE COMPANY.

This bond shall be in force from Nine o'clock A. M. Standard time, on the first day of Feb., 1911, until Four o'clock P. M., Standard time, on the 31st day of Jan., 1912.

IN TESTIMONY WHEREOF, THE AMERICAN BANKERS ASSURANCE COMPANY has caused these presents to be executed in duplicate by its authorized officers and its corporate seal to be here set at Dover, Delaware, this 30th day of Jan., 1911.

AMERICAN BANKERS ASSURANCE COMPANY.

By John B. Christensen,  
*Vice President.*

(Seal)

Attest: E. A. Peters, *Secretary.*

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EXHIBIT "B."

*In the District Court of the Third Judicial District  
of the State of Idaho, in and for Ada County.*

A. C. AMONSON, who sues on behalf of himself and  
all depositors and other creditors of First Na-  
tional Bank of Salmon, Idaho, *Plaintiff,*

vs.

AMERICAN BANKERS ASSURANCE COM-  
PANY, a Corporation, *Defendant.*

COMPLAINT.

The plaintiff complains of the defendant and alleges:

I.

That the First National Bank of Salmon, Idaho, is, and at all the times hereinafter mentioned was a

National Banking Corporation duly organized and existing under the laws of the United States pertaining to National Banks and was up to and on the 7th day of June, 1911, transacting a National Banking business at the City of Salmon, in the State of Idaho.

## II.

That on said 7th day of June, 1911, said First National Bank of Salmon, Idaho, closed its doors and suspended payment, and was at that time, and ever since has been insolvent and unable to meet the demands of its creditors in due course of business. That thereupon one Harry Yaeger, a National Bank Examiner of the United States, was placed in charge of said bank by the Comptroller of the Currency of the United States, and was thereafter on the 8th day of August, 1911, appointed Receiver of said bank by said Comptroller, and resigned as said Receiver on September 12, 1911, upon which date Frank R. McCormick was appointed by the said Comptroller, qualified, and ever since has been, and now is, the duly qualified and acting Receiver of said First National Bank of Salmon, Idaho.

## III.

That prior to and on the said 7th day of June, 1911, the plaintiff was an unsecured depositor in said First National Bank of Salmon, Idaho, and had on deposit in said bank at the time said bank closed its doors and suspended payment \$5500, in lawful money of the United States. That the amount of said deposit was net over and above any and all

claims of the bank against this plaintiff excepting \$2500 partnership note which has been paid in full. That the amount of said deposit has not been paid, nor has any part thereof been paid, and the whole thereof is now due and owing from said bank to this plaintiff, excepting 20 per cent paid by the Receiver in dividends.

#### IV.

That the American Bankers Assurance Company is a corporation duly organized and existing under the laws of the State of Delaware and transacting business in the State of Idaho under and by virtue of a compliance with the laws of said State, and was, during the times hereinbefore mentioned, qualified and authorized to transact a general surety and assurance business, and was engaged particularly in the business of insuring depositors and creditors of banks against loss by reason of the suspension, failure or insolvency of said banks.

#### V.

That on the 30th day of January, 1911, said American Bankers Assurance Company, in consideration of a premium then paid, made, executed and delivered to all depositors and other creditors of said First National Bank of Salmon, Idaho, its certain bond obligatory in the total sum of \$320,000.00, wherein and whereby it agreed to pay to such depositors and creditors the net balance owing to them as the same became due upon receipt of satisfactory proof of the net sum due, accompanied by proof that said bank

had suspended payment or was unable to meet the demands of its creditors in due course of business. By the terms of said bond the same was to remain in force and was in force from 9 o'clock A. M., Standard time, on the 1st day of February, 1911, until 4 o'clock P. M., Standard time, on the 31st day of January, 1912.

## VI.

That by the terms of said bond the defendant agreed to pay and became liable to pay to this plaintiff the said amounts so on deposit in said bank to his credit upon compliance with the certain conditions mentioned and recited in said bond. That the plaintiff duly performed all the conditions of said bond on his part to be performed. That the plaintiff has demanded that the defendant pay the said amount of said deposit so due to the plaintiff, as hereinbefore stated, and said amount is due from the defendant to the plaintiff under the terms of said bond.

## VII.

That immediately upon the closing of the doors of said First National Bank of Salmon, Idaho, and suspension of payment as aforesaid, the said Harry Yaeger, National Bank Examiner, in charge of said bank, notified the defendant, American Bankers Assurance Company, of the failure and suspension of payment of said bank, and subsequently on or about July 9th, 1911, the said Harry Yaeger furnished to said defendant on behalf of all depositors and creditors of said bank a detailed statement of the amounts due depositors and other creditors of said First Na-



tional Bank of Salmon, Idaho. That further performance of the conditions of said bond was waived by the defendant, American Bankers Assurance Company, in the manner following, that is to say:

(a) The said American Bankers Assurance Company repeatedly between the 7th day of June, 1911, and the 22nd day of September, 1911, recognized, acknowledged and admitted liability to all depositors and creditors upon said bond, and promised to pay the full amount of all claims of said depositors.

(b) That upon the receipt of said statement of July 9th, 1911, or thereabouts, as hereinbefore alleged, the said American Bankers Assurance Company, by its Manager, L. A. Coate, accepted said statement and made no request or demand for any other, further, or additional statement and made no objection to the form or manner of the statement furnished, and furthermore paid no attention to and ignored the requests by the said Harry Yaeger for forms or blanks or information as to any other or further proof which would be required, and thus led said Harry Yaeger, and through him the depositors and other creditors, to believe that no further proof would be required.

(c) That during all of said period from the 7th day of June, 1911, to the 22nd day of September, 1911, and thereafter up to the 6th day of October, 1911, the said defendant entered into and conducted negotiations with said Receiver, and each of them, looking towards and contemplating the re-opening

of said bank as being more desirable than liquidation thereof, and promised to do whatever could be done towards that end and promised to send an examiner on behalf of said defendant company to look fully into the condition of said bank and the claims of said depositors, and promised that said examiner would attend to all matters connected with such liquidation or submit a proposition for re-opening the said bank upon his visit.

That by said negotiations, representations and course of dealings the said Harry Yaeger, as National Bank Examiner and as Receiver, was led to believe during the three months immediately ensuing upon the failure and suspension of said bank that the said bank would be re-opened through the agencies of the said defendant, or that the said defendant would send its examiner during that period to examine into the claims of the depositors and affairs of the bank and would make satisfactory adjustment of said claims, and for all these reasons no steps were taken to make formal statements or proofs of claims of individual depositors, nor were such depositors notified of their right or privilege to make such claims, and said depositors, and particularly this plaintiff, were and remained in ignorance of the conditions and provisions of said bond executed by the defendant, as aforesaid, for their benefit and neglected to make such formal proof.

That defendant did not send its said examiner to look into said claims and affairs of said bank, and its action in promising to do so, as this plaintiff is in-

formed and believes and alleges on information and belief was intended, and did cause said Harry Yaeger, and through him said depositors and other creditors of said bank aforesaid, to refrain from proving said claims in strict accordance with the terms of said bond.

(d) That after the expiration of the period for presentation of formal proofs of claim, to-wit, on or about the 22nd day of September, 1911, Frank R. McCormick, Receiver of said bank, paid to the defendant company, and the defendant company accepted, the balance of the premium upon said bond of assurance, to-wit, the sum of \$400.00, and by so accepting the same the said company recognized said bond of assurance as in force.

(e) That on or about the 10th day of April, 1912, the said plaintiff and all other depositors of said bank, through their attorneys, submitted an itemized list of all claims due the said depositors and other creditors of said bank and offered to make the specific assignments of said claims to the said defendant. That the said defendant retained said proof and offer but made no reply thereto.

### VIII.

That the plaintiff brings this suit on behalf of himself and all depositors and other creditors of said First National Bank of Salmon, Idaho. That there are a great number of said depositors and other creditors, to-wit, over 300.

That a list of all said depositors and other creditors with the net amount due each upon the date of

suspension and now due is hereto annexed, marked Exhibit "B" and by reference made a part hereof. That the various allegations of this complaint are hereby repeated and reiterated as to each one of said depositors and other creditors to the same extent as if they were repeated at length substituting in each case the name of the depositor or creditor and the amount due him.

That the question involved in this cause is one of common and general interest of many persons and the parties, to-wit, the said depositors and other creditors, are numerous and it is impracticable to bring them all before the Court, and for each to sue separately in the ordinary course of law would involve multiplicity of suits. That furthermore, this plaintiff and all depositors and creditors have joint proportionate interests in the common fund and neither has any right to preference or superiority to the other and the plaintiff and all other depositors are remediless in the ordinary course of law.

Wherefore, the plaintiff prays judgment as follows:

(1) That he be given judgment for the amount of his claim and costs of suit.

(2) That notice of said suit be given to all depositors and other creditors of said First National Bank of Salmon; that said depositors and other creditors be given an opportunity to appear and to present and prove their said claims and be given judgment for the amount thereof.

(3) That all funds of the defendant within the jurisdiction of the Court and available to the satisfaction of said claims, not in excess of the amount of said bond, be sequestered and placed in the hands of a Receiver, to be appointed by the Court for said purpose, and that said Receiver distribute said funds in pro rata proportion to the approved claims among the plaintiff and the several depositors and other creditors who may prove their claims in this suit.

(4) That the plaintiff and all depositors and other creditors of said bank be given all other, further and proper relief which to the Court may seem just and equitable.

And the plaintiff will ever pray, etc.

CAVANAUGH, BLAKE & MacLANE,  
*Attorneys for Plaintiff,*  
Residence: Boise, Idaho.

State of Idaho,  
County of.....,—ss.

A. C. Amonson, being first duly sworn, on oath deposes and says: That he is the plaintiff in the above entitled action; that he has read the foregoing complaint, knows the contents thereof, and that he believes the facts therein stated to be true.

A. C. AMONSON.

Subscribed and sworn to before me this 15th day of May, 1912.

J. P. NIXON, JR.,  
*Notary Public.*

J. P. Nixon, Lemhi County, Idaho. Notarial seal.



ENDORSEMENT.

*In the District Court of the Third Judicial District  
of the State of Idaho, in and for Ada County.*

A. C. AMONSON, who sues on behalf of himself and  
all depositors and other creditors of First Nation-  
al Bank of Salmon, Idaho,                      *Plaintiff,*

vs.

AMERICAN BANKERS ASSURANCE COM-  
PANY, a Corporation,                      *Defendant.*

COMPLAINT.

Filed 3:28 P. M., May 18, 1912.

Stephen Utter, Clerk.

By B. Clyde Eagleson, Deputy.

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EXHIBIT "C."

In EQUITY.

*In the District Court of the United States for the  
District of Idaho, Southern Division.*

A. C. AMONSON, who sues on behalf of himself  
and all other depositors and other creditors of  
First National Bank of Salmon, Idaho,

*Plaintiff,*

vs.

AMERICAN BANKERS ASSURANCE COM-  
PANY, a Corporation,                      *Defendant.*

ANSWER.

*The answer of American Bankers Assurance Com-  
pany, a Corporation, to the bill of complaint.*

This defendant, reserving all manner of exception  
that may be had to the uncertainties and imperfec-

tions of the bill, comes and answers thereto, or to so much thereof as he is advised is material to be answered, and says:

I.

Admits all the allegations of paragraph I of plaintiff's bill of complaint.

II.

Admits all the allegations of paragraph II of plaintiff's bill of complaint.

III.

Defendant has no knowledge, and neither denies or admits that prior to and on the said 7th day of June, 1911, the plaintiff was an unsecured depositor in said First National Bank of Salmon, Idaho, and had on deposit in said bank at the time said bank closed its doors and suspended payment \$5500.00, in lawful money of the United States. That the amount of said deposit was net over and above any and all claims of the bank against this plaintiff, excepting \$2500 partnership note which has been paid in full. That the amount of said deposit has not been paid, nor has any part thereof been paid, and the whole thereof is now due and owing from said bank to this plaintiff, excepting 20 per cent paid by the Receiver in dividends, and therefore puts the plaintiff to his proof.

IV.

Defendant admits all of the allegations of paragraph IV of plaintiff's bill of complaint.

## V.

Defendant admits that on the 30th day of January, 1911, said American Bankers Assurance Company, in consideration of a premium then paid, made, executed and delivered to all depositors and other creditors of said First National Bank of Salmon, Idaho, its certain bond obligatory in the total sum of \$320,000.00, but denies, except as is in the said bond provided, that therein and thereby it agreed to pay to such depositors and creditors the net balance owing to them as the same became due upon receipt of satisfactory proof of the net sum due, accompanied by proof that said bank had suspended payment or was unable to meet the demands of its creditors in due course of business. Admits that by the terms of said bond the same was to remain in force and was in force from 9 o'clock A. M., Standard time, on the 1st day of February, 1911, until 4 o'clock P. M., Standard time, on the 31st day of January, 1912.

## VI.

Admits that by the terms of said bond the defendant agreed to pay and become liable to pay to this plaintiff the said amounts so on deposit in said bank to his credit upon compliance with the certain conditions mentioned and recited in said bond, but denies that the plaintiff duly performed all the conditions of said bond on his part to be performed and denies that the plaintiff has demanded that the defendant pay the said amount of said deposit so due to the plaintiff as hereinbefore stated, and denies that said amount is due from the defendant to the plain-

tiff under the terms of said bond, or in any other sum.

## VII.

Defendant denies that immediately upon the closing of the doors of said First National Bank of Salmon, Idaho, and suspension of payment as aforesaid, the said Harry Yaeger, National Bank Examiner, in charge of said bank, notified the defendant, American Bankers Assurance Company, of the failure and suspension of payment of said bank, and subsequently on or about July 9th, 1911, the said Harry Yaeger furnished to said defendant on behalf of all depositors and creditors of said bank a detailed statement of the amounts due depositors and other creditors of said First National Bank of Salmon, Idaho, but alleges the truth to be that the said Harry Yaeger had no knowledge that there was a bond in the possession of the bank securing depositors until after so notified by the present Receiver, Frank R. McCormick, and that he could not and did not serve notice of any kind upon the company or any of its officers and agents until after the expiration of ninety days, the time given to creditors to notify the American Bankers Assurance Company. Defendant denies that further performance of the conditions of said bond was waived by the defendant, American Bankers Assurance Company, in the following manner:

(a) Deny that the said American Bankers Assurance Company repeatedly between the 7th day of June, 1911, and the 22nd day of September, 1911, recognized, acknowledged and admitted liability to all depositors and creditors upon said bond, and

promised to pay the full amount of all claims of said depositors, but alleges the truth to be that the American Bankers Assurance Company in no way, either by officer, agent or otherwise, between the 7th day of June, 1911, and the 22nd of September, 1911, recognized or admitted liability to any depositors or creditors or admitted liability to any depositors or creditors upon said bond, nor did they promise to pay any claim of creditors or depositors.

(b) Denies that upon the receipt of said statement of July 9, 1911, or thereabouts, as hereinbefore alleged, the said American Bankers Assurance Company, by its Manager, L. A. Coate, accepted said statement and made no request or demand for any other further or additional statement, and made no objection to the form or manner of the statement furnished, and furthermore paid no attention to and ignored the requests by the said Harry Yaeger for forms or blanks or information as to any other or further proof which would be required, and thus led said Harry Yaeger, and through him the depositors and other creditors, to believe that no further proof would be required, but alleges the truth to be that L. A. Coate was not in the employ of the American Bankers Assurance Company on July 9, 1911, having severed all connection with the American Bankers Assurance Company about the 15th day of April, 1911.

(c) Defendant denies that during all of said period from the 7th day of June, 1911, to the 22nd day of September, 1911, and thereafter up to the 6th



day of October, 1911, the said defendant entered into and conducted negotiations with said Receivers, and each of them, looking towards and contemplating the re-opening of said bank as being more desirable than liquidation thereof, and promised to do whatever could be done towards that end, and promised to send an examiner on behalf of said defendant company to look fully into the condition of said bank and the claims of said depositors, and promised that said examiner would attend to all matters connected with such liquidation or submit a proposition for re-opening the said bank upon his visit.

That by said negotiations, representations and course of dealings the said Harry Yaeger, as National Bank Examiner and as Receiver, was led to believe during the three months immediately ensuing upon the failure and suspension of said bank that the said bank would be re-opened through the agencies of the said defendant, or that the said defendant would send its examiner during that period to examine into the claims of the depositors and affairs of the bank and would make satisfactory adjustment of said claims, and for all these reasons no steps were taken to make formal statements or proofs of claims of individual depositors, nor were such depositors notified of their right or privilege to make such claims, and said depositors, and particularly this plaintiff, were and remained in ignorance of the conditions and provisions of said bond executed by the defendant, as aforesaid, for their benefit, and neglected to make such formal proof, but defendant alleges that it was not charged with the duty of no-

tifying said plaintiff or said depositors of their rights and privileges under said bond, but on the contrary the bank was the agent of said depositors, and upon the suspension of the bank the Receiver was their agent and it was the duty of the bank and the Receiver to know the existence of said bond, the terms thereof, and to notify the depositors of their rights thereunder and to protect them thereunder. Defendant admits that it did not send its said Examiner to look into said claims and affairs of said bank, but alleges that it never promised to do so and was under no obligation to do so. Defendant denies that it ever promised to send an examiner and therefore that its action in promising to do so could have been intended or did cause the said Harry Yaeger, and through him said depositors and other creditors of said bank aforesaid, to refrain from proving said claims in strict accordance with the terms of said bond, but defendant alleges the truth to be that from August 31, 1911, until about the 12th day of June, 1912, the officers and directors of the American Bankers Assurance Company were under a restraining order from the Court of Chancery of the State of Delaware, in and for Kent County, prohibiting them to transact any business of any kind whatever for the company, and that it would have been an impossibility for the company to have legally acted or committed itself in any way to the Receiver of the First National Bank of Salmon, Idaho, or any of its creditors, or any other person or persons interested in claims against the company; the Receiver, pendente lite, appointed by the aforesaid Court, being the only

person who at any time transacted any business for the company during said period aforesaid.

(d) Defendant denies that after the expiration of the period for presentation of formal proofs of claim, to-wit, on or about the 22nd day of September, 1911, Frank R. McCormick, Receiver of said bank, paid to the defendant company, and the defendant company accepted, the balance of the premium upon said bond of assurance, to-wit, the sum of \$400.00.

(e) Defendant has no information or belief whether or not that on or about the 10th day of April, 1912, the said plaintiff and all other depositors of said bank, through their attorneys, submitted an itemized list of all claims due the said depositors and other creditors of said bank and offered to make specific assignments of said claims to the said defendant. That said defendant retained said proof and offer but made no reply thereto, but alleges the truth to be that on the 10th day of April, 1912, the restraining order issued by the Delaware Court, as aforesaid, was still in force and if there was any notice of existing claims and offers to make specific assignments given by the attorneys of the depositors as alleged, these notices never reached the defendant or its officers and they have no knowledge whatever of any such notices having been given. The affairs of the company, its books, records, etc., were wholly in the hands of the Receiver in Delaware, and that aforesaid notices were not received by such Receiver.

### VIII.

Defendant has no knowledge and neither admits

or denies that the plaintiff brings this suit on behalf of himself and all depositors and other creditors of said First National Bank of Salmon, Idaho. That there are a great number of said depositors and other creditors, to-wit, over 300. That a list of all said depositors and other creditors with the net amount due each upon the date of suspension and now due is hereto annexed, marked Exhibit "B," and by reference made a part hereof. That the defendant extends all the denials and affirmations in this its said answer to cover that portion of paragraph VIII of plaintiff's bill, as follows: "That the various allegations of this complaint are hereby repeated and reiterated as to each one of said depositors and other creditors to the same extent as if they were repeated at length substituting in each case the name of the depositor or creditor and the amount due him." Defendant has no knowledge and neither admits or denies that the question involved in this cause is one of common and general interest of many persons and the parties, to-wit, the said depositors and other creditors, are numerous and it is impracticable to bring them all before the Court, and for each one to sue separately in the ordinary course of law would involve multiplicity of suits. That furthermore, this plaintiff and all depositors and creditors have joint and proportionate interests in the common fund and neither has any right to preference or superiority to the other, and the plaintiff and all other depositors are remediless in the ordinary course of law, and therefore puts the plaintiff to its proof.

Having thus made full answer to all the matters and things contained in the bill, this defendant prays to be dismissed hence with its costs in this behalf incurred.

BOGART & HASBROUCK,  
*Counsel and Solicitors for Defendant.*

The above and foregoing answer is made according to the knowledge, information and belief of the officers of the American Bankers Assurance Company.

In testimony whereof, The American Bankers Assurance Company has caused these presents to be executed by its authorized officers and its corporate seal to be here set at St. Louis, Missouri, this 27th day of December, 1912.

AMERICAN BANKERS ASSURANCE COM-

PANY, By I. B. Jones, President.

(Seal)

Attest: Samuel T. Fox, Secretary.

ENDORSEMENT.

*In the District Court of the United States for the  
District of Idaho, Southern Division.*

A. C. AMONSON, who sues on behalf of himself and all other depositors and other creditors of First National Bank of Salmon, Idaho,

*Plaintiff,*

vs.

AMERICAN BANKERS ASSURANCE COM-  
PANY, a Corporation, *Defendant.*

ANSWER.

Filed December 30, 1912.

A. L. Richardson, Clerk.



EXHIBIT "D."

*In the District Court of the United States in and for  
the District of Idaho, Southern Division.*

A. C. AMONSON, who sues on behalf of himself  
and all other depositors and other creditors of  
First National Bank of Salmon, Idaho,  
*Plaintiff,*

vs.

AMERICAN BANKERS ASSURANCE COM-  
PANY, a Corporation, *Defendant.*  
APPLICATION FOR ORDER AUTHORIZING  
COMPROMISE OF SUIT.

Come now the above-named plaintiff and Frank R. McCormick, the Receiver of the First National Bank of Salmon, Idaho, and apply to the Court for an order authorizing them to accept the proposition of compromise of this action made by the said defendant, as hereinafter set forth, and respectfully represent to the Court as follows:

I.

That on or about the . . . day of May, 1912, the plaintiff herein filed this action against the defendant upon a certain bond executed and delivered by the defendant to all depositors and other creditors of the First National Bank of Salmon, Idaho, in the total sum of Three Hundred Twenty Thousand Dollars (\$320,000.00), wherein and whereby it agreed to pay to such depositors and other creditors the net balance owing to them as the same became due, upon receipt of satisfactory proof of the net sum due, ac-

companied by proof that said bank had suspended payment or was unable to meet the demands of its creditors in due course of business; that thereafter the defendant filed its answer in said cause, in which it denied that it is in any way now liable to the said depositors and other creditors upon its said bond, and has put in issue the right of said depositors and other creditors to now recover any amount upon said bond; that reference is hereby made to said complaint and answer on file.

## II.

That shortly after the said First National Bank of Salmon, Idaho, suspended doing business, the said Frank R. McCormick was appointed the Receiver of said bank, who immediately thereafter qualified and is now acting as such Receiver.

## III.

That the State of Idaho is now and was at the time that the said First National Bank of Salmon, Idaho, suspended doing business a depositor in said bank, and had on deposit therein the sum of Twenty-five Thousand Four Hundred Eighty-four and 1-100 Dollars (\$25,484.01), which has not been paid by said bank to the said State of Idaho and is now a valid claim against said bank; excepting the sum of Five Thousand Nine Hundred Thirty-one and 78-100 Dollars (\$5931.78), paid to said State by the United States Fidelity & Guaranty Company of Baltimore, Md., which said amount of said deposit was duly assigned to said company and was by it proved as a claim against said bank.

## IV.

That on or about the . . . day of March, 1913, the said defendant made a proposition of compromise and settlement of the above entitled cause to the plaintiff and the said Receiver, in which it agreed to pay upon the claim of the State of Idaho, a depositor of said First National Bank of Salmon, Idaho, the sum of Seventeen Thousand Dollars (\$17,000.00) as payment in full of all claims or demands of any kind that the said depositors and other creditors of said First National Bank of Salmon, Idaho, may have against said defendant upon said bond in consideration of said Receiver's surrendering to it One Thousand Two Hundred Fifty (1250) shares of stock now owned by said First National Bank of Salmon, Idaho, of the said American Bankers Assurance Company and of the said depositors and other creditors releasing said defendant from all further liability upon said bond.

## V.

That immediately after receiving said proposition of compromise made by said defendant, the said Frank R. McCormick, as such Receiver, reported the same to the Comptroller of the Currency of the United States for consideration, and recommended that acceptance of the same; that shortly thereafter the Comptroller of the Currency authorized and directed the said Receiver to accept said proposition of compromise made by the defendant; that after a thorough investigation and consideration of the facts now in the possession of the plaintiff, A. C. Amon-

son, and said Receiver concerning said plaintiff's cause of action in said cause, and after consultation with our attorneys representing said plaintiffs, and after further considering the amount that the plaintiffs might recover upon said bond in case they were successful in their said action, we believe it to be to the best interest of said plaintiffs and all parties concerned in said action to accept said proposition of compromise made by said defendant.

Wherefore, the said plaintiff and Receiver for the reasons above stated pray for an order of the Court authorizing them to accept said defendant's proposition of compromise of this action and that an order or decree be made in this cause in accordance with the conditions contained in said proposition of compromise.

A. C. AMONSON, *Plaintiff.*

FRANK R. McCORMICK,

*Receiver of First National Bank of  
Salmon, Idaho.*

CAVANAH, BLAKE & MacLANE,

*Attorneys for Plaintiff.*

Residing at Boise, Idaho.

State of Idaho,

County of Lemhi,—ss.

A. C. Amonson and Frank R. McCormick, being severally duly sworn, depose and say that the said A. C. Amonson is one of the plaintiffs in the above entitled cause, that affiants have each read the foregoing application, know the contents thereof, and

that they each believe the facts therein stated to be true.

A. C. AMONSON.

FRANK R. McCORMICK.

Subscribed and sworn to before me this 8th day of April, 1913.

J. P. NIXON, JR.,

(Seal)

*Notary Public.*

ENDORSEMENT.

*In the District Court of the United States in and for  
the District of Idaho, Southern Division.*

A. C. AMONSON, who sues on behalf of himself  
and all other depositors and other creditors of  
First National Bank of Salmon, Idaho,

*Plaintiff,*

VS.

AMERICAN BANKERS ASSURANCE COM-  
PANY, a Corporation,

*Defendant.*

APPLICATION FOR ORDER OF COMPROMISE.

Filed May 9, 1913. A. L. Richardson, Clerk.

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EXHIBIT "E."

*In the District Court of the United States for the  
District of Idaho, Southern Division.*

A. C. AMONSON, who sues on behalf of himself  
and all depositors and other creditors of the First  
National Bank of Salmon, Idaho,

*Plaintiff,*

VS.

AMERICAN BANKERS ASSURANCE COM-  
PANY, a Corporation,

*Defendant.*



## DECREE OF COURT.

The above entitled action came regularly on for trial on the 9th day of May, 1913, before the Court, sitting without a jury. Messrs. Cavanah, Blake & MacLane appearing as counsel for the plaintiff, and Messrs. Hawley, Puckett & Hawley and Bogart & Hasbrouck appearing as counsel for the defendant, The cause was submitted to the Court upon the pleadings and evidence and the written application of compromise offered by the respective parties, and the Court, after considering the same, finds that the First National Bank of Salmon, Idaho, is and was at all the times mentioned in plaintiff's complaint a National Banking corporation, duly organized and existing under the laws of the United States pertaining to National Banks, and that on the 7th day of June, 1911, it closed its doors and suspended payment of demands of its creditors; that on the eleventh day of September, 1911, Frank R. McCormick was appointed by the Comptroller of the Currency of the United States Receiver of said bank and is now and ever since has been such Receiver; that prior to and on the 7th day of June, 1911, the plaintiff was an unsecured depositor in said First National Bank of Salmon, Idaho; that the American Bankers Assurance Company, the defendant herein, is a corporation duly organized and existing under the laws of the State of Delaware and transacting business in the State of Idaho, and was engaged particularly in the business of insuring depositors and creditors of banks against loss by reason of the suspension, fail-

ure, or insolvency of said banks; and that on the thirtieth day of January, 1911, the said defendant, in consideration of a premium then paid, made, executed and delivered to all depositors and other creditors of said First National Bank of Salmon, Idaho, its certain bond obligatory in the total sum of \$320,000.00, wherein and whereby it agreed to pay such depositors and creditors the net balance owing to them as the same became due (a copy of said bond is attached to plaintiff's complaint, marked Exhibit "A"); and that on the . . . . . day of May, 1913, the plaintiff, A. C. Amonson, on behalf of himself and all depositors and other creditors of said First National Bank of Salmon, Idaho, and at the request of said depositors and said Receiver, instituted this action upon said bond in the District Court of the Third Judicial District in and for Ada County against the said defendant, the American Bankers Assurance Company, which was, upon the petition of said defendant, removed to the above entitled Court for trial; that during the trial the said plaintiff and defendant and the said Receiver of the First National Bank of Salmon, Idaho, presented their written and duly verified application for an order authorizing them to compromise the above entitled cause, which was received in evidence by the Court and from which it appears that the State of Idaho is now and was at the time that the said First National Bank of Salmon, Idaho, suspended doing business a depositor in said bank and had on deposit therein the sum of \$25,484.01, which has not been paid by said bank to the said State of Idaho, excepting the sum of

\$5,931.78, paid to the said State by the United States Fidelity & Guaranty Company of Baltimore, Maryland, and which said amount of \$5,931.78 was duly assigned to said company and was by it proved as a claim against said bank, and that the said defendant agrees to pay upon the said claim of the State of Idaho the sum of \$17,000.00, and to take an assignment thereof from the said State, to be acknowledged as a claim against said bank to be paid by said bank only after all depositors, creditors and other demands and claims against said bank have been first paid in full, together with interest thereon, which shall be payment in full of all claims, demands or liabilities of any kind that the said depositors and other creditors of said bank may have against said defendant upon said bond, and that the said Receiver is to surrender and deliver to said defendant 1250 shares of the capital stock of said defendant now owned by said bank.

That immediately after receiving said proposition of compromise made by said defendant the said Receiver reported the same to the Comptroller of the Currency of the United States for consideration, and that shortly thereafter he was authorized and directed by said Comptroller of the Currency to accept said proposition of compromise, and that he and the plaintiff applied to the Court for authority to accept said proposition of compromise and settlement of this cause, as they believed it to be to the best interests of all parties interested in said bond.

Whereupon, by reason of the premises aforesaid, and the evidence submitted, and said written propo-

sition of compromise filed herein, and it appearing that this Court has jurisdiction to settle and adjust the subject matter hereof between all the parties interested therein;

It is ordered, adjudged and decreed, that the said defendant pay to the State of Idaho the sum of \$17,000.00 upon the said claim of said State as a depositor in said First National Bank of Salmon, Idaho, and take from the State of Idaho a receipt therefor to the Receiver of said bank, and an assignment thereof to the said defendant, which said assigned claim shall only be considered an obligation against said bank and the Receiver thereof, after all the depositors and other creditors of said bank are first paid in full with interest, and that said bank surrender to the defendant 1250 shares of the capital stock of said defendant, now held by it.

(F. S. D.) And the defendant, having paid said sum of \$17,000.00 to the State of Idaho, and delivered to the Receiver of said bank the receipt of the Treasurer of the State of Idaho therefor as said payment on said claim of said State as required aforesaid, and the Receiver of said bank having delivered to the defendant said 1250 shares of the capital stock of said defendant as required aforesaid, it is hereby ordered, adjudged and decreed that the said bond above referred to and upon which this suit is brought is cancelled and all further liability of the defendant thereunder is considered satisfied and settled in full.

Done in open Court this 9th day of May, 1913.

(Signed)    FRANK S. DIETRICH,  
*District Judge.*



ENDORSEMENT.

*In the District Court of the United States for the  
District of Idaho, Southern Division.*

A. C. AMONSON, who sues on behalf of himself  
and all depositors and other creditors of the First  
National Bank of Salmon, Idaho,

*Plaintiff,*

vs.

AMERICAN BANKERS ASSURANCE COM-  
PANY, a Corporation,

*Defendant.*

DECREE OF COURT.

Filed May 9, 1913. A. L. Richardson, Clerk.

Endorsed: Filed December 11, 1914.

A. L. Richardson, Clerk.

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*In the District Court of the United States in and for  
the District of Idaho, Eastern Division.*

IN EQUITY—No.....

FRANK R. McCORMICK, as Receiver of the First  
National Bank of Salmon, a Corporation,

*Plaintiff,*

vs.

HARRY G. KING, NORMAN I. ANDREWS,  
GEORGE BUCK, GUY E. BOWERMAN, FRED  
G. HAVEMANN, JOHN LOTTRIDGE and E. S.  
EDWARDS,

*Defendants.*

ANSWER TO COMPLAINANT'S FOURTH  
AMENDED BILL.

*To the Honorable, the Judges of the District of the  
United States, in and for the District of Idaho.*



Come now the defendants, Norman I. Andrews, Harry G. King and E. S. Edwards, and for their separate answer to complainant's Fourth Amended Bill admit, deny and allege:

I.

Admit each and every allegation in paragraph I of Complainant's Fourth Amended Bill.

II.

Admit each and every allegation in paragraph II of Complainant's Fourth Amended Bill.

III.

That as to the allegation in paragraph III, stating the purpose of the Comptroller of the Currency in levying an assessment and requisition on the shareholders of said First National Bank to the full face or par value of the shares of stock of said bank held by each of the said shareholders respectively, and amounting in all to the sum of Fifty Thousand Dollars, of which amount there has been paid into the hands of the Receiver the sum of Twenty-five Thousand Dollars, defendants have not sufficient information and belief to enable them to answer said allegation, and therefore deny the same; and that defendants have not sufficient information and belief to enable them to answer as to whether or not a number of the shareholders were insolvent, and therefore deny the same; and said defendants have not sufficient information and belief to enable them to answer the allegation as to whether the Receiver will be unable to collect approximately the sum of

Twenty Thousand Dollars of such assessments or any other part thereof or any sum, and therefore deny said allegation; and that defendants have not sufficient information and belief to enable them to answer the allegation, and the Receiver after realizing upon all of the assets of the said bank now available and applying same to the debts and obligations thereof, the same will be insufficient to pay all of the debts and obligations, and that a deficiency of approximately the sum of Twenty Thousand Dollars of unpaid obligations will remain, or that any unpaid obligations will remain, or that there will be any deficiency in any sum whatsoever, and therefore deny said allegation.

#### IV.

Admit each and every allegation in paragraph IV of Complainant's Fourth Amended Bill.

#### V.

Deny that Harry G. King, Norman I. Andrews, Guy E. Bowerman, Fred G. Havemann, George Buck and John Lottridge, and each of them, or either of them, during the term of service of each of said defendants, or at all, as directors aforesaid, knowingly permitted and assented to the making of loans by the officers, agents and servants of said First National Bank of Salmon far in excess of the limit, or in excess of the limit provided by Sec. 5300 of the Revised Statutes of the United States; deny that large sums of money belonging to the stockholders and depositors of said bank became wasted and lost on account of any loans knowingly permitted and assented

to be made by either of the defendants answering herein, in violation of said section or any law, as a result of any wrongful and unlawful conduct of either of the defendants herein knowingly permitted and assented to, or at all. Deny that the members of said H. G. King's family, on the 15th day of February, 1910, or at any other time, were owning any shares of stock in said Salmon Lumber Company.

## VI.

Deny that each and all of the loans mentioned in paragraph VI of Complainant's Fourth Amended Bill were in excess of one-tenth part of the stock of said bank actually paid in, and deny that they were each and all in violation of Section 5200 of the Revised Statutes of the United States. Admits that at the times referred to in said paragraph VI, when said alleged loans were claimed to have been made, said Harry G. King was the duly elected and acting President of said bank, the said Norman I. Andrews was the duly elected and acting Vice President, and that the said John Lottridge was the duly elected and acting Cashier thereof, and with the said defendants, Guy E. Bowerman, George Buck and Fred G. Havemann, constituted the Board of Directors of said bank. Admits that said Board of Directors amended Section 34 of the by-laws of said bank by resolution duly passed as alleged in said paragraph VI, but deny that each and all of said defendants, Harry G. King, Norman I. Andrews, George Buck, Fred G. Havemann and John Lottridge, attended all the meetings of said Board of Directors as in said para-

graph alleged and personally passed upon and knowingly approved each monthly statement of loans. Deny that Norman I. Andrews made any of said alleged loans or had anything to do with the making thereof, and deny that Norman I. Andrews, during the time when said alleged loans were made, was charged with the conduct and management of the affairs of said bank, except as a Director thereof. Deny that said Directors, or any of them, knew that at the time alleged loans were made, that said Harry G. King, or any member of his family, held any interest whatsoever in the said Salmon Lumber Company, and deny that the said Norman I. Andrews knew that said Harry G. King and John Lottridge were making any excessive loans to said Salmon Lumber Company, and the said Andrews further denies that he carelessly, negligently, wilfully or knowingly in any way consented that the said King and Lottridge might make any illegal loans to said Salmon Lumber Company, and further denies that the funds of said bank became lost because of any illegal loans made by said bank or any officer thereof to the said Salmon Lumber Company. The defendants, Harry G. King and Norman I. Andrews, further deny that the said Norman I. Andrews, George Buck and Fred G. Havemann knew that excessive loans were made to F. M. Pollard and S. A. Pollard and to said Harry Brown as alleged in Complainant's Fourth Amended Bill, in paragraph VI, and deny that they carelessly, negligently, knowingly and wilfully permitted and allowed the same to be made, and

deny that the funds of said bank became lost because of any of said alleged loans.

## VII.

That as to the allegations in paragraph VII, alleging Guy E. Bowerman to have been a duly elected, qualified and acting member of the Board of Directors of said bank, from its organization until the 8th day of June, 1911, and further alleging that he carelessly, wilfully and negligently neglected to attend any meeting of the Board of Directors of said bank during the entire period of his incumbency as a Director, and wilfully, carelessly and negligently failed to, during said entire period, discharge his duties and obligations as a member of the Board of Directors of said bank in examining into and keeping well informed concerning its affairs and particular loans which were being made by said bank, and further alleging that the said Bowerman, during the period when the affairs of said bank were alleged to be grossly mismanaged, wilfully permitted and allowed said King and Lottridge to make such loans, and particularly the loans to said Salmon Lumber Company, F. M. Pollard and S. A. Pollard and Harry Brown, defendants have not sufficient information and belief to enable them to answer said allegations, and therefore deny the same.

## VIII.

With reference to paragraph VIII of Complainant's Fourth Amended Bill, defendants deny that the Salmon Lumber Company had insufficient funds to satisfy and discharge liabilities at the time of its



alleged insolvency, and with reference to the money received by said First National Bank of Salmon from the assets of said Salmon Lumber Company, amounting in all to the sum of Thirty-eight Hundred and Sixty Dollars, defendants have not sufficient information and belief to enable them to answer said allegation and therefore deny that any loss will result to said First National Bank on account of any loans made to said Salmon Lumber Company. That as to the allegations in said paragraph, stating that no part of the sum of Seven Thousand Nine Hundred and Fifty Dollars, alleged to have been loaned to said F. M. Pollard and S. A. Pollard, except for a credit of One Hundred and Fifty Dollars, and that the balance of said sum alleged to have been so loaned will be lost to said bank, defendants have not sufficient information and belief to enable them to answer said allegations and therefore deny the same. That as to the allegation that said Harry Brown is insolvent and that not more than approximately Twelve Thousand Dollars will be realized from all his available assets which have been turned over to said Receiver and that the balance of said excessive loans so made to him would be lost to said bank, defendants have not sufficient information and belief to enable them to answer said allegation and therefore deny the same.

### IX.

That as to the allegations in paragraph IX defendants admit that the said Board of Directors purchased all the assets of the bank of Langsdorf and Com-

pany, but deny that they paid the sum of Fourteen Thousand Five Hundred Dollars over and above the par or face value of said asseets or said sum over and above the true value of the assets of said bank, but admit they paid the sum of Twelve Thousand Five Hundred Dollars over and above the face and true value of the material assets and did so knowingly and intentionally in order to secure the business of said bank and the good will thereof, believing such a payment was a fair consideration to be allowed for the business and believing that the stockholders of said First National Bank of Salmon would be benefited thereby, and denying any want of care, diligence or negligence in representing the affairs of said bank in said transaction and in paying said sum of Twelve Thousand Five Hundred Dollars, and further denying that by reason of said transaction the money of the stockholders of said First National Bank of Salmon became thereby lost and negligently wasted in the approximate sum of Twelve Thousand Five Hundred Dollars or any sum whatsoever.

### X.

That as to the allegations contained in paragraph X, defendants deny that they wilfully, carelessly and negligently failed to properly manage and conduct the affairs of said bank; deny that they wilfully and carelessly allowed the same to be grossly mismanaged whereby the assets thereof were wasted and lost; deny that the said Harry G. King as President and John Lottridge as Cashier, at any time while operating and conducting the affairs of said bank, wil-

fully, carelessly and negligently loaned the funds of said bank to various persons and companies upon insufficient or no security and to various other persons and companies not having sufficient assets with which to pay the same, whereby large sums of money belonging to stockholders and depositors of said bank became lost and wasted; and deny that any sums of money whatsoever belonging to the stockholders and depositors of said bank became lost and wasted because of any carelessness and negligence on the part of said bank officers and directors, in making any loans whatsoever; deny that said King and Lottridge in their capacity as officers of said bank, respectively, during any time whatsoever, carelessly, negligently and wilfully made large loans of the funds of said bank or any loans whatsoever to officers thereof, or to companies in which some of said officers were interested; and deny that any loans alleged to have been made by them in excess of any amount justified by the financial standing of the persons and companies to whom any such loans were made, but admit that in some instances overdrafts of different persons and companies were paid by said bank through the agency of said King and Lottridge, but deny that large sums of money of said stockholders and depositors thereby became wasted and lost. Admits that said King and Lottridge, as officers of said bank, on or about the 11th day of July, 1910, loaned to said F. M. Pollard and S. A. Pollard the sum of Seven Thousand Nine Hundred Fifty Dollars, as evidenced by two notes of that date payable to said bank, that

said note of Six Thousand Two Hundred Fifty Dollars represented a sum which the bank was permitted to loan under the provisions of Section 5200 of the Revised Statutes of the United States and the Acts amendatory and supplemental thereto, and that the sum of One Thousand Seven Hundred Dollars only represented an excess loan under said provisions of the Statutes. Deny that at the time said loans were made the financial standing of said Pollards would not justify the making of said loans, and deny that said loans were wilfully, carelessly and negligently made without sufficient or any security. Deny that at the time the alleged loans were made by said First National Bank of Salmon to said Salmon Lumber Company, the financial standing of said Salmon Lumber Company would not justify the making of said loans or any of them, and deny that said alleged loans or any loans whatsoever were wilfully, carelessly and negligently made, and deny that they were made without sufficient security; admits that the Salmon Lumber Company, after the making of said alleged loans, suspended business, but deny that at that time it had insufficient assets with which to settle its liabilities, and deny that there will be a loss to said bank on account of said alleged loans of approximately Ten Thousand Dollars. Deny that at the time any alleged loans were made to Harry Brown, the financial standing and credit of said Brown would not justify the making of said loans, and deny that any alleged loans made to said Harry Brown were made wilfully, carelessly and negligently and without sufficient or any security; defendants allege



that they have not sufficient or any information and belief to enable them to answer as to the amount received by said First National Bank from the available assets of said Harry Brown alleged to have been turned over to said bank, and therefore deny that said First National Bank of Salmon did not realize more than the sum of Two Thousand Dollars therefrom, and further deny that the balance of said alleged loans made to Harry Brown, over and above the said credit of Two Thousand Dollars, will result in a total loss to said bank.

#### XI.

That as to the allegations in paragraph XI, defendants deny that said Norman I. Andrews, George Buck and Fred G. Havemann, wilfully, carelessly and negligently permitted and allowed said alleged loans to be made and deny that at the monthly meetings of the Board of Directors of said bank, held during the period within which said loans were made, passed upon, approved and ratified said loans.

#### XII.

That as to the allegations in paragraph XII, defendants deny that on the 9th day of July, 1910, the capital surplus of said bank had become impaired and the value of the assets thereof greatly depreciated, and deny that the capital surplus of said bank had become impaired and the assets thereof greatly depreciated on account of any wrongful or illegal act done by the officers and directors of said bank, admit that on said date at a meeting of said Board of Directors, it was ascertained that a surplus of



approximately Eight Thousand Dollars was shown to have accrued under the management of said bank, as shown at the prior meeting of the Board of Directors held in the previous June, and that at the said meeting held on the 9th day of July, 1910, Five Thousand Dollars was carried to the surplus account of said bank and Twenty-five Hundred Dollars was paid to the stockholders from this accrued fund of approximately Eight Thousand Dollars. Defendants deny that their acts in declaring and paying said dividend of Twenty-five Hundred Dollars and in carrying said sum of Five Thousand Dollars to the surplus account of said bank, were illegal or intended for the purpose of making loans in excess of the amounts which could have been legally made.

### XIII.

That as to the allegations in paragraph XIV, stating that the losses which will result to the said bank on account of the said alleged loans will reach the probable amount of twenty-five or thirty thousand dollars, and that the losses which will result thereto from said alleged overdrafts will reach the probable amount of four thousand dollars or more, defendants have not sufficient information and belief to enable them to answer said allegations and therefore deny the same. Defendants deny that any illegal dividend has been declared and that no loss because of any dividend will occur to said bank for which defendants will be liable; and further deny that the defendants, or either of them, as directors of said First National Bank of Salmon, have caused

any alleged loss to said First National Bank by the careless and negligent handling of its funds or by the mismanagement of its affairs or by their wilfull neglect as directors and officers of said institution.

And for other and further answer, said defendants allege and state:

### I.

That on or about the 30th day of January, 1911, the said First National Bank of Salmon, Idaho, procured a bond from the American Bankers Assurance Company in favor of all depositors and other creditors of said bank, guaranteeing to said depositors and creditors of said bank the payment to them as follows:

“The net balance owing to such depositors and creditors as the same becomes due. Payment to the several depositors and creditors will be made upon receipt of satisfactory proof of the net sums due, accompanied by proof that said bank has suspended payment or is unable to meet the demands of its creditors in due course of business.”

Said bond being in the amount of the sum of \$320,000.00, being the total liability on said bond to said depositors and creditors. Said bond being marked Exhibit “A” to the amended answer of defendant, Guy E. Bowerman, to which pleading reference is hereby made and under stipulation on file herein made a part hereof.

### II.

That on or about the 7th day of June, 1911, the said First National Bank of Salmon, Idaho, sus-

pended business and closed its doors. That at the time said bank suspended business and closed its doors as aforesaid said bond was in full force and effect.

### III.

That the plaintiff herein was on or about the 12th day of September, 1911, the duly appointed, qualified and acting Receiver of said bank, and ever since has been and now is the duly appointed, qualified and acting Receiver of said bank.

### IV.

That on or about the 18th day of May, 1912, one A. C. Amonson, in his own behalf and in behalf of all depositors and all creditors of said bank, brought an action in the District Court of the Third Judicial District of the State of Idaho, in and for Ada County, against the said American Bankers Assurance Company to recover from such company the said net balance owing to said depositors and other creditors by said bank at the time of such suspension, and by reason of such suspension, as will more fully appear from a copy of the complaint in such action, attached to the amended answer of defendant, Guy E. Bowerman, and marked Exhibit "B"; and under stipulation on file herein is by reference made a part hereof.

### V.

That subsequently to the bringing of said action and on the petition of said American Bankers Assurance Company such action was moved to this Court, as will more fully appear from Exhibit "C," attached to the amended answer of defendant, Guy

E. Bowerman, and under stipulation on file herein by reference made a part hereof.

## VI.

That on or about the 30th day of December, 1912, the answer on behalf of the said American Bankers Assurance Company to the said complaint, Exhibit "C" to the amended answer of the defendant, Guy E. Bowerman, and under stipulation on file herein by reference made a part hereof, was filed in this Court.

## VII.

That the said plaintiff herein was a party to said action so commenced by the said A. C. Amonson as above stated, and as such party joined with the said A. C. Amonson in an application to this Court for an order authorizing a compromise on such action on behalf of the said depositors and other creditors and a release by such depositors and other creditors of the American Bankers Assurance Company from all further liability upon such bond, as will more fully appear from a copy of such application marked Exhibit "D" and attached to the amended answer of defendant, Guy E. Bowerman, and under stipulation on file herein by reference made a part hereof.

## VIII.

That subsequently such proceedings were had in such action. That on the 9th day of May, 1913, this Court rendered a decree therein authorizing such compromise and a release of the said American Bankers Assurance Company from further liability under said bond in full satisfaction of all the claims

of the said depositors and all other creditors of said First National Bank of Salmon, Idaho, as will more fully appear from a copy of such decree attached to the amended answer of the defendant, Guy E. Bowerman, under stipulation on file herein, said decree being marked Exhibit "E" to said amended answer, and by reference made a part hereof; that such compromise and settlement in full satisfaction of all claims of all creditors and depositors by reason of said suspension of said bank was made, and said bond released and discharged from further liability thereunder.

### IX.

That by reason of said settlement in satisfaction of all claims of said depositors and all other creditors, plaintiff is barred and estopped from again suing on behalf of said depositors and said creditors of said bank, and from taking any further proceedings against these defendants herein.

*Wherefore*, these answering defendants pray that the plaintiff take nothing by his Fourth Amended Bill of Complaint, and that this action be dismissed as to them and each of them and that these answering defendants and each of them have judgment against the plaintiff for their costs in this behalf expended and for such other and further relief as to the honorable Court may seem just and equitable.

E. W. WHITCOMB,

J. B. ELDRIDGE,

*Attorneys for Defendants, Harry G. King, Norman I. Andrews and E. S. Edwards.*



United States of America,  
District of Idaho,  
County of Ada,—ss.

J. B. Eldridge, being first duly sworn, deposes and says that he is one of counsel of record on behalf of the defendants, Harry G. King, Norman I. Andrews and E. S. Edwards, and that the said defendants and each of them are absent from the County of Ada, State of Idaho, where this affiant resides, and by reason of which this affiant makes this verification. That this affiant has read the foregoing answer of said defendants to plaintiff's Fourth Amended Bill of Complaint, and believes the facts stated in the pleading to be true.

J. B. ELDRIDGE.

Subscribed and sworn to before me this the 23rd day of December, 1914.

CHARLES F. REDDOCH,  
*Notary Public.*

Endorsed: Filed December 28, 1914.

A. L. Richardson, Clerk.

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*In the District Court of the United States, in and for  
the District of Idaho, Eastern Division.*

FRANK R. McCORMICK, as Receiver of the First  
National Bank of Salmon, a Corporation,  
*Plaintiff,*

vs.

HARRY G. KING, NORMAN I. ANDREWS,  
GEORGE BUCK, GUY E. BOWERMAN, FRED  
G. HAVEMANN, JOHN LOTTRIDGE and E. S.  
EDWARDS,  
*Defendants.*

MOTION TO STRIKE AND NOTICE  
THEREOF.

To the above named defendants, Harry G. King, Norman I. Andrews and E. S. Edwards, and to their attorneys, E. W. Whitcomb and J. B. Eldridge, and to the above named defendant, Guy E. Bowerman, and his attorneys, Millsaps & Moon and Richards & Haga:

*You and Each of You Will Please Take Notice,* That the plaintiff will, on the 8th day of February, 1915, at the hour of ten o'clock A. M. of said day, or as soon thereafter as counsel can be heard, at the court room of said Court, in the City of Boise, Ada County, State of Idaho, move the Court to strike the amendment to answer of the defendant, Guy E. Bowerman, and the affirmative defense of the defendants, Harry G. King, Norman I. Andrews and E. S. Edwards, contained in their answer filed herein, upon the grounds set forth in the motion attached hereto and filed herewith.

Dated January 16, 1915.

FRED J. COWEN,  
BUDGE & BARNARD,  
*Attorneys for Plaintiff.*

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*In the District Court of the United States, in and for  
the District of Idaho, Eastern Division.*

FRANK R. McCORMICK, as Receiver of the First  
National Bank of Salmon, a Corporation,  
*Plaintiff,*

VS.

HARRY G. KING, NORMAN I. ANDREWS,  
GEORGE BUCK, GUY E. BOWERMAN, FRED  
G. HAVEMANN, JOHN LOTTRIDGE and E. S.  
EDWARDS, *Defendants.*

MOTION TO STRIKE.

Comes now the plaintiff and moves to strike the "Amendment to Answer" of the defendant, Guy E. Bowerman, and also that portion of the answer of Norman I. Andrews, Harry G. King and E. S. Edwards, designated as paragraphs 1 to 9, inclusive, of the affirmative defense of said defendants, upon the following grounds:

1. That the same does not state facts sufficient to constitute a defense to the plaintiff's Fourth Amended Bill.

2. That the same is immaterial and redundant.

FRED J. COWAN and  
BUDGE & BARNARD,

*Attorneys for the Plaintiff,*  
Residence: Pocatello, Idaho.

Endorsed: Filed Jan. 16, 1915.

A. L. Richardson, Clerk.

At a stated term of the District Court of the United States for the District of Idaho, held at Boise, Idaho, on Monday, February 15th, 1915,  
behalf of said defendants, and after argument by the respective counsel and upon consideration the Court ordered that said motion be and the same is hereby sustained.

OLDEN, FRED G. HAVEMANN     and JOHN  
LOTTRIDGE,     *Defendants.*

DECISION.

June 21, 1915.

Jesse R. S. Budge and J. M. Stevens, Attorneys for  
Plaintiff.

Millsaps & Moon and Richards & Haga, for Defend-  
ant Bowerman.

E. W. Whitcomb, for Defendants Edwards, Andrews  
and King.

*Dietrich, District Judge:*

The First National Bank of Salmon City is in the course of liquidation, and its Receiver, Frank R. McCormick, brings this action against its directors to recover damages, on the ground of their alleged mismanagement of its affairs. There was no service of process upon the defendants, Buck, Havemann and Lottridge, nor is it seriously contended that upon the record judgment for any amount against Edwards would be warranted; as to these four defendants, therefore, the suit will be dismissed without further discussion.

There remains for consideration the liability of the defendant Harry G. King, who was at all times the President or Cashier, and the active managing officer of the bank; Norman I. Andrews, who was the Vice President, and actively engaged as an executive officer; and Guy E. Bowerman, who was a director, but nothing more. With the possible exception in the case of Bowerman, of a part of the year 1911, these three were directors during the entire period

of the bank's existence, which was from January 13, 1906, until June 8, 1911. On the latter date there was a voluntary suspension, and on August 8, 1911, the Comptroller of the Currency, deeming the institution to be insolvent, placed it in the hands of a Receiver.

Originally the bank had a capital stock of \$25,000.00, but on February 5, 1910, this was increased to \$50,000.00. The books showed a surplus of \$1,000.00 on January 7, 1908; an additional \$4,000.00 on January 5, 1909; \$5,000.00 more on February 5, 1909; and still an additional \$5,000.00 on July 9, 1910, making a total of \$15,000.00. Upon taking charge of the bank, the Comptroller levied one hundred per cent assessment upon the stock. A large part of this is uncollectible, and it is apparent that the total assets will be insufficient to pay the depositors in full. The question, therefore, is, can the Receiver recover in this action on behalf of the creditors, and, if so, what amount.

There are five general charges of misfeasance:

- (1) That in March, 1909, the Board of Directors, with the active participation of some, and without the protest of any, of the defendants, carelessly and negligently bought out the rival bank of Langsdorf & Company, by paying \$14,500.00 in excess of the par value of the assets.
- (2) That on July 9, 1910, when there was no warrant for so doing, they declared a dividend of five per cent, and on account thereof distributed \$2,500.00 to the stockholders.
- (3) That from time to time, and in violation of a



by-law expressly prohibiting the practice, overdrafts were allowed, of which items aggregating approximately \$3,900.00 are found to be uncollectible. (4) That the defendants made, or knowingly permitted to be made, loans in excess of the limitation provided by Section 5200 of the Revised Statutes, whereby large sums were lost. (5) That at various times they made, or knowingly permitted to be made, loans of divers amounts to persons who were unworthy of credit.

In qualifying as directors, each of the defendants was required by law to take an oath, that he would, "so far as the duty devolved upon him, diligently and honestly administer the affairs" of the bank, and that he would "not knowingly violate, or willingly permit to be violated, any of the provisions" of the national banking statutes. (Sec. 5147 R. S. U. S.). By Section 5239 (R. S. U. S.) it is expressly declared that: "If the directors of any national banking association shall knowingly violate, or knowingly permit any of the officers, agents or servants of the association to violate, any of the provisions of this title \* \* \* \*, every director who participated in or assented to the same shall be held liable in his personal and individual capacity for all damages," etc. Considering the nature of the wrongdoing charged, it is thought that these statutory provisions, rather than the general rules of the common law, furnish the measure of the defendants' duty and responsibility. *Briggs v. Spaulding*, 141 U. S. 132. *Yates v. Jones National Bank*, 206 U. S. 158. *Thomas v. Taylor*, 224 U. S. 71.

*Liability of Defendant King.*

In view of King's intimate knowledge of and active participation in the transactions of the bank, manifestly his responsibility in the premises represents the maximum of responsibility for any one of the defendants; his liability will therefore be considered first.

*The Langsdorf & Company Purchase.*

This matter I am inclined to dispose of summarily. The evidence is wholly insufficient to warrant a finding that in making the purchase the directors violated any duty. Even in the light of the wisdom which comes only after the event, it cannot be said that it was ill-advised; and undoubtedly it was in good faith. The purchase price was not unreasonable, and upon the whole I am inclined to think that it was easily within the range of sound business discretion. The mere fact that as a part of the assets so purchased there were loans which in amount exceeded the limit to which national banks are confined is quite immaterial. *Allen v. Xenia First National Bank*, 23 Ohio St. 97. Assuming that such loans were retired when they fell due, there was no semblance of a violation of the national banking act. Nor is it of importance that what is called a bonus was paid. No reason is apparent why a national bank may not pay a premium for what it regards as good paper, bearing a high rate of interest, or should put aside the consideration that such purchase will remove from the field an active competitor.

*The Dividend.*

The dividend of five per cent, ordered on July 9, 1910, was probably in fact unwarranted, but it does not necessarily follow that the defendant is liable under the law for the return of the \$2,500.00 thus distributed to the stockholders. This is not a suit against the stockholders to recover moneys erroneously paid to them, which in equity they are not entitled to retain. If the defendant is liable at all in this action, he is liable for the whole amount of the dividend, on the theory that, disregarding the obligations of his trust, he knowingly violated the provisions of the law. His duty in this respect is defined by Section 5204 (R. S. U. S.), which prohibits the withdrawal of any part of the capital of a banking association. It is declared that if losses have at any time been sustained equal to or exceeding the undivided profits on hand, no dividend shall be made," and no dividend shall ever be made \* \* \* \* to an amount greater than its net profits then on hand, deducting therefrom its losses and bad debts. "Except for such inference as may be legitimately drawn from the fact that upon liquidation in the latter part of 1911 the bank was found to be then insolvent, there is no evidence of its condition on July 9, 1910. But while, if standing alone, this fact might imply an unhealthy condition of business at an earlier date, when viewed in the light of other features of the record, it is of little probative value. In the first place, it is to be noted that the pleadings do not call into question the propriety of the action of the directors in setting apart as surplus \$1,000.00,

\$4,000.00 and \$5,000.00, on January 7, 1908, and January 5th and February 5th, 1909, respectively. Indeed it is expressly alleged that the bank "did a large and profitable business after its organization until the close of the year 1909." The evidence does not support the view that the Langsdorf purchase in the spring of 1909 was detrimental, but the impression I get from the entire record is that, up to some time in 1910, the business of the institution was prosperous. A railroad was building into Salmon City, and, as is the common experience in such cases, the abnormal amount of money thus put into circulation for labor and supplies, coupled with the natural disposition of the community to over-estimate the financial value of a railway connection, unduly stimulated values and business enterprise. In 1909 the road was completed to Salmon City, and, contrary to expectations, it terminated there, and further construction work was abandoned. The community was again thrown back largely upon its former resources. In the meantime another bank had been opened, and presumably was securing some of the business which would otherwise have gone to this bank. And during the year the defendant was drawn into litigation, which, while it did not directly involve the bank, still, because of its nature and the publicity given to it, had a tendency to undermine public confidence. In view of these conditions, it is entirely possible to reconcile the theory of prosperity and profit up to July, 1910, with the fact of insolvency a year later. It is needless to point out



that a banking business is of a most sensitive character, and radical changes are not infrequently wrought in a very short time. The three large losses upon which the plaintiff relies, and which are next to be considered, are highly illustrative. Two of the debtors were manufacturers of building materials, much in local demand in 1910, and the other was a retailer of such materials. Had building operations continued in 1911 as in 1910, it is wholly improbable that there would have been any loss upon these accounts; the enterprises of these three borrowers would in all likelihood have been profitable, and they would have been able to take care of their obligations. Building ceased and left them bankrupt and the bank with a loss of between twenty and twenty-five thousand dollars. Moreover, notwithstanding the shrinkage of assets resulting from these unfavorable conditions, another bank in the community offered in June, 1911, to take over the business of this bank, and pay the creditors in full, but apparently the proposition failed to secure the approval of the Comptroller of the Currency. In consideration of these conditions, I am unable to conclude that the action of the board in declaring the dividend, and in setting apart a surplus fund on July 9, 1911, signifies either bad faith on the part of the defendant or a careless or unreasonable exercise of judgment. I am satisfied that he did not knowingly or intentionally violate the law.

#### *Overdrafts.*

The Receiver finds that overdraft accounts approximating \$3,800.00 are uncollectible. There is



no substantial proof upon the proposition that the numerous individuals to whom these overdrafts were allowed were at the time unworthy of credit; in other words, so far as appears, if, instead of accepting and paying the checks as they came in, the defendant had taken notes from the borrowers for equivalent amounts, there would have been no ground for complaint. The national banking law does not prohibit overdrafts. It does, however, authorize the association to adopt by-laws, and the plaintiff rests upon the terms of a by-law here adopted soon after the organization of the bank, unqualifiedly prohibiting officers and employes from paying any check unless the drawer thereof had on deposit a sufficient amount for that purpose. The defendant explained that in adopting the by-laws, a form had been used, and that this provision was not considered, and that in practice it had never been complied with. In view of banking customs quite universally prevailing in this section of the country, I am inclined to think that the explanation should be given full credence. So general has the practice been of honoring checks by which accounts of customers are sometimes overdrawn in small amounts that I doubt whether it would have been possible for this bank to have succeeded in building up a business at all had the strict terms of this by-law been observed. It is wholly improbable that the stockholders intended such a radical innovation. Notwithstanding the pronounced tendency of the last four or five years toward the adoption of more rigid banking rules, it is to be ques-

tioned whether even today a rigorous enforcement of such a by-law would be found practicable, at least unless all the banks in a given business district joined in such a policy. The independent action of a single bank would result in much irritation and a material loss of patronage. No doubt is entertained that the adoption of the by-law was an inadvertence, and that if any person interested was conscious of its existence he was entirely content that it should become a dead letter. Surely the stockholders must have known that overdrafts were continuously being allowed, and no objection was interposed. It is altogether unlikely that the depositors had any knowledge of the existence of such a by-law, and in the absence of such information they would naturally assume that the bank would carry on its business in the customary way, and would therefore in some instances permit customers to overdraw their accounts. In the reports published from time to time, as required by law, large items of overdrafts were reported. By all concerned there was in effect an acquiescence in the practice, and no one should now be heard to complain. Moreover, if the defendant is to be charged with losses incident to this general and long continued usage, he ought also to be credited with the profits. Undoubtedly patronage was thus secured and held for the bank, and most of the loans thus made were repaid with interest. Upon the whole, I am inclined to think that it would not only be harsh, but unjust, to hold the defendant liable under this head.

*Excessive and Improvident Loans.*

The other two charges, namely, that excessive loans were allowed, and that loans were carelessly made to individuals not entitled to credit, while involving distinct questions of law and fact, may be considered together, because they relate to the same loans. These were three in number, and represent the bulk of the plaintiff's claim. One was made to the Salmon Lumber Company, a corporation organized and controlled by relatives of the defendant. On July 1, 1910, its liabilities to the bank amounted to \$3,500.00. Additional sums were borrowed by it from time to time during the latter part of the year, with the result that in January, 1911, and at the time the bank closed its doors, the indebtedness aggregated \$15,000.00 besides accrued interest. It is impossible to determine the precise amount of the loss that will be sustained, because of certain contingent interests of the debtor, whose affairs are in the hands of a Receiver or trustee, but I estimate it at \$7,000.00. Another loan was to F. M. and S. A. Pollard, for \$7,950.00, as evidenced by two notes, one for \$6,250.00, dated June 29, 1910, and another for \$1,700.00, dated July 11, 1910. It is found that there will be a loss on account thereof of \$7,800.00. The third loan was to one Harry Brown. It is evidenced by two notes, dated January 2, 1911, one for \$6,500.-00, and the other for \$6,250.00, making an aggregate of \$12,750.00. The loss on this item I find will amount to \$11,760.00.

Section 5200, R. S. U. S., as amended by the act of

June 22, 1906 (34 Stat. 45), provides that the total liabilities of a borrower shall not at any time exceed one-tenth of the unimpaired capital stock and surplus of the bank. At the time these loans were made the defendant may have reasonably thought, and I am inclined to credit him with the belief, that the capital, and the surplus of \$15,000.00, were unimpaired, and in that view he could, without wrongdoing, loan to any one person up to \$6,500.00, but no more. These loans, therefore, insofar as they exceeded the amount, were in violation of the statute, and the defendant must be held responsible for the resulting loss; and that is the extent of his liability. True, there is the additional charge that, aside from the question of the statutory limitation, the loans were improvidently made, in that the debtors were not entitled to credit, and that therefore the defendant was wanting in the exercise of reasonable care. It may be that in their maximum amount the loans passed the bounds of prudence; that question it is unnecessary to decide, for we have already reached the conclusion that the defendant must be held liable for the excess over \$6,500.00. Further consideration, therefore, may be confined to the question whether or not credit to the extent of \$6,500.00 involved a want of reasonable care. In the Pollard loan there is no reason to suspect any improper motive; the defendant's sole interest was that of an officer of the bank. In the case of the Salmon Lumber Company, there is the disturbing influence of kinship. The Brown loan had an indirect connection with the business of the Lum-



ber Company, but it is too remote to justify an inference of conscious wrongdoing. The defendant himself explains the circumstances under which the loans were made, and, accepting it as substantially correct—and there is no evidence to the contrary—I am inclined to think that he was warranted in extending credit in each case up to the statutory limit. It must be borne in mind that the full amount of these loans was not made all at once. When credit was first promised it was not anticipated that so much would be required. The needs of the borrowers expanded beyond expectation, and, as is a common experience, it may have been here found necessary to extend further credit in order to protect the existing loan. As already explained, the lines of business in which these three debtors were engaged were naturally the first to suffer from the depression which followed the “boom” attending the building of the railroad, and the fact that their enterprises, for which the original loans were made, turned out to be unsuccessful does not under the circumstances necessarily reflect upon the defendant’s judgment, and certainly does not signify bad faith or want of ordinary care. Upon the whole, I am inclined to the view that in extending credit up to the statutory limit he acted with ordinary prudence.

In conformity with the foregoing conclusions, if, as I think must be done, we apply the amounts which the Receiver has been able to, or will, collect, first to the payment of that part of the loan which was legally made, the liability of the defendant may be



stated as follows: On account of Salmon Lumber Company loan, \$7,000.00; on account of Pollard loan, \$1,450.00; on account of Brown loan, \$6,250.00; making a total of \$14,700.00.

While I have found the conduct of the defendant wrongful, it was not of a flagrant character. I am inclined to think that he continued to extend credit after the limit was reached with the hope of protecting the existing loan, and while this consideration does not excuse, it tends to extenuate the fault. He received no benefit from the use of the money. No interest will therefore be allowed. *Eastfield v. McKeon*, 208 Fed. 580. *Stephens v. Phenix Bridge Co.*, 139 Fed. 248. *Union Steamboat Co. v. Chaffin*, 204 Fed. 412. *White v. United States*, 202 Fed. 501. *La Conner, etc., v. Widmer*, 136 Fed 177. *Redfield v. Ystalyfera Iron Co.*, 110 U. S. 174.

*Liability of Norman I. Andrews.*

While the defendant Andrews participated less actively than King in the management of the bank, it is thought that his legal responsibility is substantially the same. The penalty for knowingly permitting a violation of the law is not less than for knowingly violating it. Andrews lived at Salmon City, and was frequently in the bank. He was the Vice President, and for the period during which the transactions covering these three loans took place, he was receiving a salary of \$100.00 per month; he was also a member of the committee on loans and discounts. That he knew of the making of the loans, and acquiesced, without protest or objection, can hardly be

doubted. It is a reasonable inference to be drawn from the evidence, and if the fact were otherwise it is to be presumed that, being present during the trial, he would not have remained silent.

*Guy E. Bowerman.*

The status of Bowerman is somewhat different. He had no executive duties, and received no compensation. He resided and was engaged in business at St. Anthony, a distance of approximately two hundred miles from Salmon City, a considerable part of which had to be traveled by stage until the railroad above mentioned came into operation. It further appears that he never attended a meeting of the Board of Directors, nor were notices of meetings sent to him. That he did not participate in, or expressly assent to, or have anything personally to do with the making of the loans in question must be conceded, and by his counsel it is most confidently urged that he is therefore without culpability. While there are expressions in some of the decided cases which seem to support the view that liability cannot be predicated upon mere ignorance and inaction, but that there must be active participation or positive assent, it is in effect conceded that liability may arise from negligence so gross as to amount to knowledge and assent. *Briggs v. Spaulding*, 141 U. S. 132. *Thomas v. Taylor*, 224 U. S. 71. Generally speaking, it must be held, I think, that "directors cannot, in justice to those who deal with the bank, shut their eyes to what is going on around them. It is their duty to use ordinary diligence in ascertaining the condition of

its business, and to exercise reasonable control and supervision of its officers." *Martin v. Webb*, 110 U. S. 7, 15. Making application of this principle, it becomes quite immaterial that customarily no notice of board and stockholders' meetings was sent to Bowerman. He must have known that meetings were being held. He made no request to be notified, and offered no protest or complaint against the practice of holding the meetings without giving him notice. He cannot, under such circumstances, be relieved from responsibility upon the ground that the meetings were so held; his acquiescence was equivalent to consent, and in law he must be deemed to have had notice. It is not a case where, contrary to custom, there was a failure to send notice to a director, of a meeting where action was taken for which it is sought to hold him responsible.

A closely related question, but one not so free from doubt, is suggested by the defendant's non-residence. For the plaintiff it is urged that the fact is without significance, while upon the other side it is put forward as of controlling importance. The sounder view is thought to lie between the two extremes. Upon the one hand, a director must be something more than a mere figure-head; there is no such thing as a nominal directorship. It is a matter of common knowledge that directors are usually chosen because of their standing in the community, and for the purpose, among others, of inspiring public confidence, and drawing business to the bank. Their names are carried upon the stationery, and in advertising liter-

ature, as a sort of a guarantee that the management of the bank will be in good hands. *Gibbons v. Anderson*, 80 Fed. 345. *Campbell v. Watson* (N. J.), 50 Atl. 120. *Warren v. Robinson* (Utah), 57 Pac. 287. *Williams v. McKay* (N. J.), 18 Atl. 824. *Marshall v. Bank*, 85 Va. 676, 17 Am. St. Rep. 84. Be the circumstances what they may, a director rests under the obligation to give a reasonable measure of attention to, and to exercise reasonable diligence in protecting, the interests of the bank. But, upon the other hand, what his duty may be in any specific case must be determined in the light of the circumstances of the case, for here, as elsewhere, questions of negligence are to be decided not by the application of some schedule of specific duties, but by reference to the circumstances of each particular case. No one, for instance, would seriously affirm that the failure of a director to attend a board meeting always and under all circumstances amounts to a breach of duty. It may or may not constitute negligence, depending upon the conditions of the particular case. No one expects or assumes that any director will always be present, and to require constant attendance would be to exact a measure of diligence in excess of what is reasonable. As was said in *Rankin v. Cooper*, 149 Fed. 1010: "Directors are charged with the duty of reasonable supervision over the affairs of the bank. It is their duty to use ordinary diligence in ascertaining the condition of its business, and to exercise reasonable control and supervision over its affairs. They are not insurers or guarantors of the fidelity and proper conduct of the executive officers



of the bank, and they are not responsible for losses resulting from their wrongful acts or omissions, provided they have exercised ordinary care in the discharge of their own duties as directors. Ordinary care, in this matter as in other departments of the law, means that degree of care which ordinary prudent and diligent men would exercise under similar circumstances. The degree of care required further depends upon the subject to which it is to be applied, and each case must be determined in view of all the circumstances. If nothing has come to the knowledge to awaken suspicion that something is going wrong, ordinary attention to the affairs of the institution is sufficient. If, upon the other hand, directors know, or by the exercise of ordinary care should have known, any facts which would awaken suspicion and put a prudent man on his guard, then a degree of care commensurate with the evil to be avoided is required, and a want of that care makes them responsible." See also: *Briggs v. Spaulding, supra*; *Yates v. Jones National Bank, supra*; *Thomas v. Taylor, supra*; *Mason v. Moore*, 73 Ohio St. Rep. 290, 4 L. R. A. (N. S.), 597; *Movius v. Lee*, 30 Fed. 298; *Chesbrough v. Woodworth*, 195 Fed. 875; *Warner v. Penoyer*, 91 Fed. 587. In this last case it was said: "As to all these losses, the case for the complainant seems to have been prepared and presented upon the theory that when a bank has failed, and it appears that there was a general supineness and looseness of management by the directors, the burden of exoneration for the losses is on the directors. This is



not a correct theory. \* \* \* The Court cannot decree upon conjecture. As against two of the directors, the case for the complainant is predicated upon their failure to attend the semi-annual meetings of the board. It is not a necessary or legitimate inference that this omission was a contributory cause of the losses. It does not follow because a director has failed to attend meetings, that he is legally or morally responsible for the disasters that may have befallen his bank."

Now in the light of these principles it becomes manifest that the defendant's non-residence is one of the material circumstances that must be considered in determining whether or not he was negligent. The share-holders doubtless all knew where he lived, and if any depositor had any information touching his standing or qualifications as a member of the board he doubtless also knew that he resided at St. Anthony, and was there engaged in the banking business. Having this knowledge, he would not, as a reasonable man, assume that the defendant would frequently spend a week's time in taking the long stage and railroad trip to attend a board meeting, or that he would give attention to the details of the administration. For him to have been in regular attendance would have entailed hardships and a loss of time and money wholly disproportionate to the apparent need for his presence. No one would have expected it, and to do more than anyone expects is generally to exercise not ordinary, but extraordinary, care. In speaking thus, I am not to be under-

stood as holding that the defendant could with propriety absent himself from all the board meetings during a course of several years, or remain in ignorance of the general policies and general course of business in the bank. Even though he never went to Salmon City, he might, through the medium of reports from time to time keep himself measureably well informed. By reason of his business experience, and especially his long experience in banking, he would know what to require in such reports, and it is to be assumed that, generally speaking, the desired information would be given, and given correctly. Insofar as the action of the board of directors is concerned, he could, without great expense or trouble, have had a transcript of the minutes of their meetings from time to time. While he could not, without being present at the board meetings, formally give effect to his views, he could, if he found the executive officers inclined to indulge in improper practices, or to pursue unwise policies, exercise a measure of restraining influence through correspondence. In the absence of evidence to the contrary, I think it must be assumed that he thus kept himself advised; for neglect to employ means of information so obvious and inexpensive would clearly be chargeable as negligence.

True, in a letter from the defendant to King, dated August 29, 1911, there are statements to the effect that he had difficulty in procuring information, but the letter can hardly be regarded as competent proof of this fact. The letter was written after disaster

had befallen the bank, and the statements referred to are plainly self-serving in character. The communication was introduced in evidence by the plaintiff only for the purpose of establishing an admission on the part of the defendant that he had knowledge in July, 1910, that the executive officers were pursuing certain policies which he regarded as unwise. In this connection it should be added that the defendant was not called to the witness stand to explain to what policies the letter refers, nor did he choose to testify in his own behalf, although he was present at the trial. The letter itself furnishes no proof of a knowledge of excess loans.

Now, assuming that the defendant had the information which he would naturally acquire by infrequently attending board meetings, and from a reasonable system of reports, can it be held that he is in any wise responsible for these loans? Did he, with knowledge, remain silent and inactive, when he should have spoken and made active opposition, and did he thus knowingly assent to, or knowingly permit the loans to be made? The evidence is perhaps somewhat wanting in clearness upon the point, but, as I understand, these loans, insofar as the excess is concerned, were all made between July 1, 1910, and February 1, 1911. In each case there was an agreement between King, as the chief executive officer of the bank, and the debtor, for credit, to be extended in the first place by checks drawn on account, the amount of which was subsequently to be covered by notes. At the end of the month, or at such time as

King required, the debtor came in and gave a note for the aggregate amount of the overdrafts theretofore allowed. In the monthly report of "loans and discounts" the executive officials did not exhibit the loans so made, and they were discoverable only upon an examination of the individual depositors' ledger or upon a complete analysis of the aggregated item of overdrafts, for which no detail was reported. Neither were such loans entered in the special loan and discount register. Plainly such a system of bookkeeping and reports, if not designed to conceal, would in effect enable the executive officers to make excess loans, and to withhold knowledge thereof from the directors, unless the latter were sufficiently alert to insist upon an examination of the individual depositors' ledger. And unless a director suspected a disposition to violate the law in this respect, he might very well overlook the necessity for making such an investigation. Doubtless appreciating the strain at this point, counsel for the plaintiff sought to show such a course of business in allowing excess loans as to give rise to the inference that all of the directors must have had knowledge thereof and assented thereto. No loan claimed to have been excessive was made prior to October, 1909. Of dates subsequent thereto several loans or discounts are disclosed by the books in excess of \$5,000.00. It must be borne in mind that of this number those which were not over \$6,000.00 did not exceed the statutory limit. As to each of the others an explanation is furnished by King which makes it clear that he did not deem



them to be obnoxious to the limitation. We need not consider whether his construction of the law can in all cases be upheld; to say the least, his explanations are plausible, and leave little ground to question his good faith. The real point is that the record leaves no room for doubt that he was aware of the limitation, and claimed that he was keeping within it. Surely the Treasury Department could not have been unadvised of the loans relied upon to establish a wrongful custom, but so far as appears no complaint was ever made that they were excessive. In the light of these considerations, when we consider the manner in which the three loans in controversy were made and the failure of the books and reports directly to show their excessive character, together with King's testimony, the impression is left that the executive officers of the bank were conscious that the making of excess loans was likely to elicit disapproval and criticism from some quarter; or at least that it did not have the sanction of custom. In passing upon the question of the reasonableness of Bowerman's conduct, it is to be borne in mind that he had no interest, direct or indirect, in these loans, and that he stood to sustain a substantial loss (\$10,000.00 on account of his investment, and an additional \$10,000.00 on account of a possible assessment of his stock) before any injury could come to depositors. A special committee on loans and discounts, as well as an examining committee, was maintained, and an additional safeguard, it was reasonable to assume, lay in the fact that the Vice President, for whom he



seems to have had a high respect, was being paid a compensation sufficient to obligate him to give a substantial part of his time to the supervision of the affairs of the bank. That he should repose considerable confidence in these agencies was neither unnatural nor unreasonable. It may be conceded that in his failure to attend any of the board meetings, and perhaps in failing to exact detailed reports, he was measurably wanting in the exercise of due care, but upon the whole I am unable to conclude that he was grossly negligent, or that he had such information that it can be said of him that he knowingly permitted the loans to be made. As to him, therefore, the suit will be dismissed. Judgment will go against King and Andrews for \$14,700.00.

Endorsed: Filed June 22, 1915.

A. L. Richardson, Clerk.

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*In the District Court of the United States, in and for  
the District of Idaho, Eastern Division.*

FRANK R. McCORMICK, as Receiver of the First  
National Bank of Salmon, a Corporation,

*Plaintiff,*

VS.

HARRY G. KING, NORMAN I. ANDREWS,  
GEORGE BUCK, GUY E. BOWERMAN, FRED  
G. HAVEMANN, JOHN LÖTTRIDGE and E. S.  
EDWARDS,

*Defendants.*

# DECREE.

This cause came on to be heard at the March, 1915,  
term of said Court, held at the City of Pocatello, and

the same having been duly submitted and the Court being fully advised in the premises, upon consideration thereof:

*It Is Ordered, Adjudged and Decreed*, That the said defendants, Harry G. King and Norman I. Andrews, are each liable for, and that the plaintiff have and recover of and from said Harry G. King and Norman I. Andrews, and each of them, the sum of Fourteen Thousand, Seven Hundred Dollars (\$14,700.00), together with his costs herein in the sum of \$374.31.

*It Is Further Ordered, Adjudged and Decreed*, That the plaintiff take nothing by reason of his complaint against the said defendants, Guy E. Bowerman and E. S. Edwards, and that as to said defendants, Guy E. Bowerman and E. S. Edwards, plaintiff's bill of complaint herein be dismissed.

There having been no service upon or appearance by defendants, George Buck, Fred G. Havemann and John Lottridge,

*It Is Ordered, Adjudged and Decreed*, That plaintiff's bill of complaint as to said defendants be dismissed.

*Dated* this 29th day of June, 1915.

FRANK S. DIETRICH,  
*U. S. District Judge.*

Endorsed: Filed June 29, 1915.

A. L. Richardson, Clerk.

134     *Frank R. McCormick, Receiver, etc., vs.*

*In the District Court of the United States for the  
District of Idaho, Eastern Division.*

FRANK R. McCORMICK, as Receiver of the First  
National Bank of Salmon, a Corporation,  
*Plaintiff,*

vs.

HARRY G. KING, NORMAN I. ANDREWS,  
GEORGE BUCK, GUY E. BOWERMAN, B. F.  
OLDEN, FRED G. HAVEMANN and JOHN  
LOTTRIDGE,  
*Defendants.*

PRAECIPE.

*To W. D. McReynolds, Clerk of the United States  
District Court:*

*You Are Hereby Respectfully Requested* to incorporate into the transcript on appeal of said cause to the Circuit Court of Appeals for the Ninth Circuit the attached portion of the evidence taken at the trial of said cause.

*Dated* this 26th day of October, 1915.

J. M. STEVENS,  
JESSE R. S. BUDGE,  
CARL BARNARD,

*Attorneys for the Plaintiff.*

Frank R. McCormick, being first duly sworn, as a witness for Plaintiff, testified as follows:

My name is Frank R. McCormick. I am Receiver of The First National Bank of Salmon, Idaho, and of the First National Bank of Sutton, Nebraska. I am acting as Receiver of the First National Bank of Salmon by appointment of the Comptroller of the Currency, and was appointed September 12, 1911.

As such Receiver I have in my custody and under my control the books and records of the bank. The book you show me is a record which purports to be the minutes of the meetings of the stockholders and directors of the First National Bank of Salmon.

It is admitted by counsel that the First National Bank of Salmon was organized in January, 1906, with a capital stock of \$25,000.00, and with the defendants named in the bill of complaint, with others, as stockholders, which is admitted in the pleading; also that prior to the failure of the bank, prior to June, 1911, the capital stock of the bank was increased to \$50,000.00, and these defendants were stockholders of the bank, and were also directors of the concern.

Certain portions of the minutes shown at page 9 of the book referred to by the witness, offered in evidence and read into the record without objection, as follows:

**“DIRECTORS’ MEETING.”**

“At the adjourned meeting of the Board of Directors of the First National Bank of Salmon, held at the bank October 9, 1906, the following named directors were present: H. G. King, N. I. Andrews, M. M. McPherson, E. S. Edwards, A. J. McNab, J. C. Sinclair.

“The minutes of the meeting held September 11, 1906, were read and approved.

“The committee on by-laws presented their report, which was approved, and the by-laws embodied in the

report, having been read and adopted, are hereto annexed and made part of the minutes of the meeting."

Section 6 of the by-laws:

"The President shall hold his office for the current year for which the Board of which he shall be a member was elected, unless he shall resign, become disqualified, or be removed; and any vacancy occurring in the office of President or in the Board of Directors shall be filled by the remaining members."

Section 7:

"The Cashier and the subordinate officers and clerks shall be appointed to hold their offices respectively during the pleasure of the Board of Directors."

Section 8:

"The Cashier of this bank shall be responsible for all the money, funds and valuables of the bank, and shall give bond with security to be approved by the board, in the penal sum of \$10,000.00, conditioned for the faithful and honest discharge of his duties as such Cashier, and that he will faithfully apply and account for all such moneys, funds and valuables, and deliver them to the order of the Board of Directors of this bank, or to the persons authorized to receive them."

Section 9:

"The President of the bank shall be responsible for all such sums of money and property of every kind as may be intrusted to his care or placed in his hands by the Board of Directors or by the Cashier, or otherwise come into his hands as President, and shall



give bond, with security to be approved by the board, in the penal sum of \$10,000.00, conditioned for the faithful discharge of his duties as such President, that he will faithfully and honestly apply and account for all sums of money and other property of this bank that may come into his hands as such President, and pay over and deliver them to the order of the Board of Directors, or to any person or persons authorized by the board to receive them."

Section 11:

"The bonds of the officers shall be placed in the custody of a stockholder of this bank, to be designated by the Board of Directors, who shall not be one of the bonded officers, to be held by him only upon the order of the board."

Section 16:

"The Board of Directors of this bank shall hold regular meetings at the banking house for the transaction of business on the first Tuesday of each month, and should that day in any year fall upon a holiday, the regular meeting for that month shall be held on such other day as the directors at the preceding meeting may order."

"The board may also hold special meetings upon the call of the President, Cashier, or any three or more members, and whenever there shall be no quorum at a regular or special meeting the members present shall adjourn the meeting from day to day until a quorum shall be obtained, and any meeting may be adjourned from time to time by vote of a majority of the quorum present, but no business ex-

cept adjournment shall be transacted in the absence of a quorum.”

Section 17:

“There shall be a committee, to be known as the loans committee, consisting of the President, one Director, and Cashier, who shall have power to make loans, discount and purchase bills, notes, and other evidences of debt, and to buy and sell bills of exchange, and who shall at each regular meeting of the Board of Directors make a report of all bills, notes, and other evidences of debt discounted and purchased by them for the bank since their last previous report.”

Section 19:

“No officer or clerk of this bank shall pay any check drawn upon it, or pay out money on any order, unless the drawer of such check or order shall, at the time of the presentation thereof, have on deposit in the bank funds sufficient to meet such check or order.”

Section 22.

“The Board of Directors shall have power to prescribe, and, when expedient, to change the form of books and accounts to be used in the transaction of the business of this bank, and to prescribe the general or particular manner in which its affairs shall be conducted.”

Section 29.

“There shall be appointed by the Board of Directors a committee of three members, whose duty it

shall be to examine every month the affairs of this bank, to count its cash, and compare its assets and liabilities with the accounts of the general ledger, ascertain whether these accounts and all others are correctly kept, whether the condition of the bank corresponds therewith, and whether the bank is in sound and solvent condition, and to recommend to the board such changes in the manner of doing business, etc., as shall seem desirable, the result of which examination shall be reported to the board at the next regular meeting thereafter."

The Court: Is that the loan committee, Mr. Budge?

Mr. Budge: Yes, your Honor, the examining committee I would call it.

Plaintiff offers in evidence the minutes of the regular annual meeting of the stockholders of the First National Bank of Salmon, found at page 105, entitled: "Regular Annual Meeting of Stockholders."

"The third regular annual meeting of the stockholders of the First National Bank of Salmon was held at the bank on Tuesday, January 12th, 1909, at 4 o'clock P. M., thirty days notice of the time and object of such meeting having been given by publication in the Lemhi Herald of Salmon, Idaho, a copy of which notice is hereto attached. Mr. N. I. Andrews was elected chairman, and Mr. J. C. Sinclair secretary of the meeting. The roll call showed 125 shares of stock present in person, as follows: H. G. King, 75 shares; E. S. Edwards, 30 shares; N. I.

Andrews, 10 shares; J. C. Sinclair, 10 shares. Total, 125.

"The minutes of the second regular meeting of the stockholders, held January 14, 1908, and of the special meeting of stockholders, Jan. 5th, 1909, were read and adopted.

"Mr. H. G. King and J. C. Sinclair having been appointed judges of election for directors, and the ballot having been cast, the judges of election notified the acting Cashier of the bank, and reported the following result of said election:

"N. I. Andrews received 125 votes. E. S. Edwards received 125 votes. M. M. McPherson received 125 votes. G. E. Bowerman received 125 votes. A. J. McNab received 125 votes. H. G. King received 125 votes. J. C. Sinclair received 125 votes.

"N. I. Andrews, M. M. McPherson, A. J. McNab, E. S. Edwards, G. E. Bowerman, H. G. King and J. C. Sinclair, having received the greatest number of votes, were declared elected as directors for the next ensuing year.

"There being no further business for consideration, the meeting then adjourned.

"N. I. Andrews, Chairman. J. C. Sinclair, Secretary."

The attached notice referred to reads as follows:

"Stockholders meeting. The regular annual meeting of the First National Bank of Salmon, Idaho, will be held on the 12th day of January, 1909, at 4 o'clock P. M., at the banking house of this associa-

tion in Salmon, Idaho, for the purpose of electing directors and transacting any other legitimate business. Ray Edwards, Cashier. Dated Dec. 4th, 1908."

The plaintiff now offers in evidence the minutes of the special meeting of the Board of Directors, found at page 117, headed:

"Special Meeting of the Board of Directors."

"A special meeting of the Board of Directors of the First National Bank of Salmon was held at the bank, Wednesday, March 24th, 1909, at 2 o'clock P. M., and the following named directors were present:

"E. S. Edwards, H. G. King, N. I. Andrews, J. C. Sinclair.

"The meeting having been called to order, H. G. King, the President of the bank, presented a report of his negotiation for the purchase of the Langsdorf & Co. state bank, and the report having been accepted, the following resolution was offered:

"Resolved, That the First National Bank of Salmon purchase the bank and good will of the banking business of J. M. Langsdorf & Co., for the bonus or premium of \$14,500.00, in accordance with the terms and conditions set out in full in the written agreement to be signed by the respective parties.

"Upon motion duly made and carried, the resolution as read was passed, and a copy of the agreement of sale ordered spread upon the minutes.

"There being no further business for consideration, the meeting then adjourned.



“H. G. King, Chairman. J. C. Sinclair, Secretary.”

Mr. McCormick: Plaintiff's Exhibit No. 1 came into my possession among the papers and effects of the First National Bank of Salmon. We offer Exhibit No. 1 in evidence.

Mr. Richards: We object to the introduction of Plaintiff's Exhibit 1, if the Court please, on behalf of Bowerman, for the reason that there is no evidence to show that he was present or had any notice of any such special meeting, or any proceeding as required by law.

Mr. Budge: We will supply proof later on to connect Mr. Bowerman with this transaction.

The Court: Very well, on that promise the objection will be overruled.

McCormick: Plaintiff's Exhibit 2 came into my possession as Receiver of the effects of the First National Bank of Salmon. (Exhibit 2 admitted in evidence.)

Frederick V. Biscoe, called and sworn on behalf of plaintiff, testified as follows:

Plaintiff's Exhibit No. 3 offered and received in evidence, being certified copies of the oaths of the members of the Board of Directors, for 1909, 1910 and 1911.

### PLAINTIFF'S EXHIBIT NO. 3.

District of Columbia,  
City and County of Washington,—ss.

Under the provisions of Section 884 of the Revised Statutes of the United States, I, Thomas P. Kane,

Acting Comptroller of the Currency, do hereby certify that the papers hereto attached are true and complete copies of the original oaths of directors of the First National Bank of Salmon, Idaho, for the years 1909, 1910 and 1911. And of the whole of such original on file and of record in my office.

In testimony whereof, I have hereto subscribed my name, and caused my seal of office to be affixed to these presents, at the Treasury Department in the City of Washington and District of Columbia, this 16th day of March, A. D. 1914.

T. P. KANE,

*Acting Comptroller of the Currency.*

Filed March 9, 1915. A. L. Richardson, Clerk.

### OATH OF DIRECTORS.

State of Idaho,  
County of Lemhi,—ss.

We, the undersigned, Directors of the First National Bank of Salmon, located at Salmon, Idaho, being citizens of the United States, and all residents of the State of Idaho, do, each for himself, and not one for the other, solemnly swear (affirm) that we will severally, so far as the duty devolves on us, diligently and honestly administer the affairs of said Association; and that we will not knowingly violate, or willingly permit to be violated, any of the provisions of the Statutes of the United States under which said Association has been organized; and, each for himself, does solemnly swear (affirm) that he is the owner in good faith, and in his own right, of the number of shares of stock required by said Stat-

utes, subscribed by him or standing in his name on the books of the said Association; and that the same is not hypothecated, or in any way pledged as security for any loan or debt.

- |                    |                    |
|--------------------|--------------------|
| 1. H. G. KING.     | 1. H. G. KING.     |
| 2. N. I. ANDREWS.  | 2. N. I. ANDREWS.  |
| 3. GEORGE BUCK.    | 3. GEORGE BUCK.    |
| 4. F. G. HAVEMANN. | 4. F. G. HAVEMANN. |
| 5. JOHN LOTTRIDGE. | 5. JOHN LOTTRIDGE. |

Subscribed and sworn (affirmed) to before the undersigned this 10th day of January, 1911.

FRANK L. PLUMMER. (Seal)

*Notary Public.*

My commission expires February 24, 1912.

NOTE: Each director when elected must take the oath of office and, under section 5147 U. S. R. S., the oath should be transmitted to the Comptroller of the Currency immediately after the election. If the officer administering the oath has no seal, a certificate of the proper State, County or Court official to the effect that such officer is authorized to take acknowledgments must be attached.

### OATH OF DIRECTOR.

State of Idaho,  
County of Ada,—ss.

I, the undersigned, Director of the First National Bank located at Salmon, Idaho, being a citizen of the United States, and resident of the State of Idaho, do solemnly swear (affirm) that I will, so far as the duty devolves on me, diligently and honestly admin-

ister the affairs of said Association; that I will not knowingly violate, or willingly permit to be violated, any of the provisions of the Statutes of the United States under which this Association has been organized; and that I am the owner in good faith and in my own right, of the number of shares of stock required by said Statutes, subscribed by me or standing in my name on the books of said Association; and that the same is not hypothecated, or in any way pledged as security for any loan or debt.

B. F. OLDEN.

Subscribed and sworn (affirmed) to before the undersigned this 9th day of February, 1911.

CHAS. A. CAIRMS, (Seal)

*Notary Public.*

N. B. If the officer administering the oath has no seal, a certificate of the proper State, County or Court official to the effect that such officer is authorized to take acknowledgments must be attached.

### IMPORTANT.

Please state below whether elected by the shareholders at the annual meeting or a regularly called meeting, or appointed by the directors to fill a vacancy. Also give the name of the predecessor and if the vacancy was caused by death, resignation, disqualification, or expiration of term of service.

Elected by shareholders at annual meeting in place of

JOHN LOTTRIDGE,  
(Signature of Cashier.)

June 21, 1909, 10,000.

OATH OF DIRECTORS.

State of Idaho,  
County of Lemhi,—ss.

We, the undersigned, directors of the First National Bank of Salmon, located at Salmon, Lemhi County, Idaho, being citizens of the United States, and all residents of the State of Idaho, do, each for himself, and not one for the other, solemnly swear (affirm) that we will severally, so far as the duty devolves on us, diligently and honestly administer the affairs of said Association; and that we will not knowingly violate, or willingly permit to be violated, any of the provisions of the Statutes of the United States under which said Association has been organized; and, each for himself, does solemnly swear (affirm) that he is the owner in good faith, and in his own right, of the number of shares of stock required by said Statutes, subscribed by him or standing in his name on the books of the said Association; and that the same is not hypothecated, or in any way pledged as security for any loan or debt.

Signature.

- |                    |                      |
|--------------------|----------------------|
| 1. H. G. KING.     | 4. JOHN C. SINCLAIR. |
| 2. N. I. ANDREWS.  | 5. J. G. HAVEMANN.   |
| 3. JOHN LOTTRIDGE. | 6. GEORGE BUCK.      |

Subscribed and sworn (affirmed) to before the undersigned this 18th day of January, 1910.

PHILIP RAND, (Seal)

*Notary Public.*

NOTE—Each director when elected must take the oath of office and, under section 5147, U. S. R. S.,



the oath should be transmitted to the Comptroller of the Currency, immediately after the election. If the officer administering the oath has no seal, a certificate of the proper State, County or Court official to the effect that such officer is authorized to take acknowledgments must be attached.

OATH OF DIRECTOR.

June 21, 1909, 28,000.

State of California,

County of Los Angeles,—ss.

I, the undersigned, Director of the First National Bank located at Salmon, Idaho, being a citizen of the United States, and resident of the State of Idaho, do solemnly swear (affirm) that I will, so far as the duty devolves on me, diligently and honestly administer the affairs of said Association; that I will not knowingly violate, or willingly permit to be violated, any of the provisions of the Statutes of the United States under which this Association has been organized; and that I am the owner, in good faith and in my own right, of the number of shares of stock required by said Statutes, subscribed by me or standing in my name on the books of the said Association; and that the same is not hypothecated, or in any way pledged as security for any loan or debt.

G. E. BOWERMAN.

Subscribed and sworn (affirmed) to before the undersigned this 26th day of January, 1910.

NELLIE C. BROWER, (Seal)

*Notary Public.*

NOTE—Each director when elected must take the oath of office, and under section 5147, U. S. R. S., the oath should be transmitted to the Comptroller of the Currency immediately after the election. If the officer administering the oath has no seal, a certificate of the proper State, County or Court official to the effect that such officer is authorized to take acknowledgments must be attached.

### OATH OF DIRECTORS.

July 6-'08-10,000.

State of Idaho,

County of Lemhi,—ss.

We, the undersigned, Directors of the First National Bank, located at Salmon, State of Idaho, being citizens of the United States, and all residents of the State or Territory of Idaho, do, each for himself, and not one for the other, solemnly swear (affirm) that we will severally, so far as the duty devolves on us, diligently and honestly administer the affairs of said Association; and that we will not knowingly violate, or willingly permit to be violated, any of the provisions of the Statutes of the United States under which said Association has been organized; and, each for himself, does solemnly swear that he is the owner in good faith, and in his own right, of the number of shares of stock required by said Statutes, subscribed by him or standing in his name on the books of the said Association; and that the same is not hypothecated, or in any way pledged as security for any loan or debt.

Signature.

- |                   |                    |
|-------------------|--------------------|
| 1. H. G. KING.    | 3. N. I. ANDREWS.  |
| 2. E. S. EDWARDS. | 4. J. C. SINCLAIR. |

Subscribed and sworn to this 12th day of January, 1909, before the undersigned, a Notary Public in and for said County. (Seal.)

FRANK L. PLUMMER,  
*Notary Public.*

My commission expires February 24, 1912.

NOTE—Each director when elected must take the oath of office, and under section 5147, U. S. R. S., the oath should be transmitted to the Comptroller of the Currency immediately after the election. If the officer administering the oath has no seal, a certificate of the proper State, County or Court official to the effect that such officer is authorized to take acknowledgments must be attached.

July 6-'08-27,000.

### OATH OF DIRECTOR.

State of California,  
County of Monterey,—ss.

I, the undersigned, Director of the First National Bank, located at Salmon, Idaho, being a citizen of the United States, and resident of the State, or Territory, of Idaho, do solemnly swear that I will, so far as the duty devolves on me, diligently and honestly administer the affairs of said Association; that I will not knowingly violate, or willingly permit to be violated, any of the provisions of the Statutes of the United States under which this Association has been

organized; and that I am the owner, in good faith and in my own right, of the number of shares of stock required by said Statutes, subscribed by me or standing in my name on the books of the said Association; and that the same is not hypothecated, or in any way pledged as security for any loan or debt.

M. M. McPHERSON.

Subscribed and sworn to this 19th day of January, 1909, before the undersigned, a Notary Public in and for said County.

(Seal.)

F. W. ELLIS,

*Notary Public.*

NOTE—Each director when elected must take the oath of office, and under section 5147, U. S. R. S., the oath should be transmitted to the Comptroller of the Currency immediately after the election. If the officer administering the oath has no seal, a certificate of the proper State, County or Court official to the effect that such officer is authorized to take acknowledgments must be attached.

#### OATH OF DIRECTOR.

July 6-'08-27,000.

State of California,

County of Monterey,—ss.

I, the undersigned, Director of the First National Bank, located at Salmon, being a citizen of the United States, and resident of the State, or Territory, of Idaho, do solemnly swear that I will, so far as the duty devolves on me, diligently and honestly administer the affairs of said Association; that I will not knowingly violate, or willingly permit to be violated,

any of the provisions of the Statutes of the United States under which this Association has been organized; and that I am the owner, in good faith and in my own right, of the number of shares of stock required by said Statutes, subscribed by me or standing in my name on the books of the said Association; and that the same is not hypothecated, or in any way pledged as security for any loan or debt.

A. J. MacNAB.

Subscribed and sworn to this 19th day of January, 1909, before the undersigned, a Notary Public in and for said County.

(Seal.)

F. W. ELLIS,

*Notary Public.*

NOTE—Each director when elected must take the oath of office, and under section 5147, U. S. R. S., the oath should be transmitted to the Comptroller of the Currency immediately after the election. If the officer administering the oath has no seal, a certificate of the proper State, County or Court official to the effect that such officer is authorized to take acknowledgments must be attached.

#### OATH OF DIRECTOR.

January 12-'05-2,000.

State of Idaho,

County of Lemhi,—ss.

I, the undersigned, Director of the First National Bank, located at Salmon, Idaho, in the State or Territory of Idaho, being a citizen of the United States, and resident of the State or Territory of Idaho, do solemnly swear that I will, so far as the duty de-



volves on me, diligently and honestly administer the affairs of said Association; that I will not knowingly violate, or willingly permit to be violated, any of the provisions of the Statutes of the United States under which this Association has been organized; and that I am the owner, in good faith and in my own right, of the number of shares of stock required by said Statutes, subscribed by me or standing in my name on the books of the said Association; and that the same is not hypothecated or in any way pledged as security for any loan or debts.

JOHN LOTTRIDGE,

Place of residence: Salmon, Idaho.

Subscribed and sworn to this 22nd day of November, 1909, before the undersigned, a Notary Public in and for said County. (Seal.)

P. J. DEMPSEY,

*Notary Public.*

NOTE—Each director when elected must take the oath of office, and under section 5147, U. S. R. S., the oath should be transmitted to the Comptroller of the Currency immediately after the election. If the officer administering the oath has no seal, a certificate of the proper State, County or Court official to the effect that such officer is authorized to take acknowledgments must be attached.

#### OATH OF DIRECTOR.

July 6-'08-27,000.

State of Idaho,

County of Fremont,—ss.

I, the undersigned, Director of the First National Bank, located at Salmon, being a citizen of the Unit-

ed States, and resident of the State, or Territory, of Idaho, do solemnly swear (affirm) that I will, so far as the duty devolves on me, diligently and honestly administer the affairs of said Association; that I will not knowingly violate, or willingly permit to be violated, any of the provisions of the Statutes of the United States under which this Association has been organized; and that I am the owner, in good faith and in my own right, of the number of shares of stock required by said Statutes, subscribed by me or standing in my name on the books of the said Association; and that the same is not hypothecated, or in any way pledged as security for any loan or debts.

G. E. BOWERMAN.

Subscribed and sworn to this 16th day of January, 1909, before the undersigned, a Notary Public in and for said County.

(Seal.)

BERD POWER,  
*Notary Public.*

NOTE—Each director when elected must take the oath of office, and under section 5147, U. S. R. S., the oath should be transmitted to the Comptroller of the Currency immediately after the election. If the officer administering the oath has no seal, a certificate of the proper State, County or Court official to the effect that such officer is authorized to take acknowledgments must be attached.

Endorsed: Filed March 9, 1915.

A. L. Richardson, Clerk.

My name is Frederick V. Biscoe; residence, Salmon, Idaho; occupation, bookkeeper, and am employed by Frank R. McCormick, Receiver of the First National Bank, and have been since January 15, 1914. As such bookkeeper I have to do with the books and accounts and records of the First National Bank of Salmon, and am familiar with those books. The book I hold purports to be a record of the loans and discounts of the First National Bank of Salmon, between April 2, 1906, and June 1, 1911. In this book is a record of the loans taken over by the First National Bank of Salmon from the Langsdorf Bank, which was purchased by the First National Bank.

Q. Now, please read, Mr. Biscoe, the loans so taken over, which were in excess of \$5,000.00 to any one individual or firm or company.

Mr. Millsaps: We object to that, your Honor, as immaterial and incompetent and not tending to prove any issues in this case. We are not charged with taking over any loans from the bank, excessive loans from that bank.

The Court: I don't understand that to be the question. Is that the question?

Mr. Budge: Yes.

The Court: How is it material?

Mr. Budge: It is material in this: To show that the bank entered upon a course of mismanagement, and to show the date when this mismanagement commenced, and as charging the defendants with knowledge, either actual or constructive, of the mismanagement of the bank, long before the acts specifically

charged to have been wrongful were committed. Some of the Courts lay down the rule, or have laid down the rule in some cases, that where an act of mismanagement was an exception or was exceptional in its nature, or occurred within such a time that the directors might not be presumed to have knowledge of it, that there would be less responsibility attaching to the directors, under such circumstances, but if the mismanagement continued for a long period of time, and embraced transactions extending over several years, that the Board of Directors are held to accountability for failing to exercise the proper supervision and care to ascertain the condition of the bank.

The Court: I understand that principle, but I understand the objection to the question here is upon the ground that you are asking for what loans.

Mr. Budge: No, I am not asking for those loans. I am not asking to recover upon that ground.

The Court: But you were asking what loans taken over from Langsdorf and Company exceeded \$5,000.00.

Mr. Budge: Just simply for the purpose of showing that the bank here was making loans in excess of its statutory limit, and thereby mismanaging the bank.

The Court: But the bank didn't make these loans.

Mr. Budge: But it assumed them, your Honor, which would be just as blamable as to make the loans themselves.

The Court:    The objection is sustained.

Mr. Budge:    Note an exception.

The Court:    You understand that I do not sustain this objection upon the ground that you cannot introduce evidence of similar acts to those charged, for the purpose of showing intent and knowledge, but I do not conceive that the taking over of the assets of this bank would involve transactions of a similar nature. I see nothing wrong in taking over the assets of this Company, even though those assets may have involved loans in excess of \$5,000.00.

Mr. Budge:    I want to say to your Honor at this time, in this connection, that we have proof here to the effect that these loans were treated upon the same basis by the Comptroller of the Currency. I shall offer in this connection this paper which I shall have marked Plaintiff's Exhibit 4:

PLAINTIFF'S EXHIBIT NO. 4.

District of Columbia,  
City and County of Washington,—ss.

Under the provisions of Section 884 of the Revised Statutes of the United States, I, Thomas P. Kane, Acting Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete copy of the original office record of letter dated August 10, 1909, addressed to the First National Bank, Salmon, Idaho, and of the whole of such original on file and of record in my office.

*In Testimony Whereof*, I have hereunto subscribed my name, and caused my Seal of Office to be affixed



to these presents, at the Treasury Department in the City of Washington and District of Columbia, this 19th day of March, A. D. 1914. (Seal.)

T. P. KANE,

*Acting Comptroller of the Currency.*

Treasury Department.

Office of Comptroller of the Currency.

Form 2187—Ed. 500—F. C., July 23, '13.

TREASURY DEPARTMENT,  
WASHINGTON.

L 8080

Aug. 10, 1909.

G. T.

President,

First National Bank,

Salmon, Idaho.

Sir:

The report of condition of your bank on June 23, 1909, shows the following loans in excess of one-tenth of its unimpaired capital stock and surplus:

J. W. Moore.....	\$16,000
I. O. O. F. No. 5.....	16,000
W. J. Wettenberg.....	10,000
H. W. Soule, et al.....	7,500
H. W. Soule, et al.....	7,500

Immediate arrangements must be made to reduce these loans to the statutory limit. An observance of the law in this respect is insisted upon and will be strictly enforced.

The directors are requested to unite in making a prompt reply in detail to this letter over their indi-

vidual signatures, stating that it has been read by them, and what steps will be taken to reduce these loans to the lawful limit.

Respectfully,  
T. P. KANE,  
*Deputy Comptroller.*

Excessive Loans.

Form 2248—Ed. Feb. 12-'08-4,500.

Endorsed: Filed March 9, 1915.

A. L. Richardson, Clerk.

The Court: In order that I may understand you, Mr. Budge, suppose that otherwise the purchase of the assets of this bank of Langsdorf & Co. was a good business investment, would have been such an investment as any good banker would justify, and suppose that among those assets were one or two loans in excess of \$5,000.00, do you contend that the purchase would have violated any law or any moral principle, or any principle of good business ethics?

Mr. Budge: Not particularly the purchase, your Honor, but I contend that it would have been necessary for the purchaser to have made arrangements, or such arrangements as might be necessary, so that this bank would not have assumed those excessive loans to any one individual, and that if it purchased the business of another bank, even though it were a good business proposition, that it would not be justified under the law in assuming responsibility indirectly which the law prevents it from assuming directly.

The Court: That wouldn't be assuming any responsibility; that is an asset and not a liability.

Mr. Budge: Yes, that may be true, your Honor, but it might become.

The Court: Well, if it does become—if thereafter the bank acted carelessly in handling these loans, that is another question. I am sustaining the objection now to the offer upon the ground that you are making the offer for the purpose of showing that by this act itself, the act of purchase, the directors were negligent. I cannot yield to the view that merely because there were among these assets so purchased loans which would be in excess of what these directors might make for the national bank, of which they were directors, that that would in itself constitute negligence. I think that would be extraordinary.

Mr. Budge: So that your Honor may understand my position more clearly, it may be that the First National Bank paid, we will say, the face value of some of these loans. Now, in that sense, if the bank were amply secure and the loan were absolutely good, and nothing was lost, everything would be all right about it; but assume, for instance, that such a loan had been made and such a loan had been purchased and a loss was sustained by the bank, then the other phase of the situation will be presented and the bank was blamable for taking over such a loan and making payment for it. If a loss did occur, they have assumed a responsibility by taking over a loan which might or might not be paid.

The Court: You can show that. You can show that they took over bad loans. You may show that they carelessly or wilfully paid an exorbitant price, and you may show that it was a bad transaction, for the purpose of fixing the blame upon the directors. In other words, you can show anything that would indicate they had acted carelessly or negligent, or in disregard of the rights or interests of the bank of which they were directors.

Mr. Budge: My contention is that it is presumed to be negligence under the statute when the loan which they assumed responsibility for was taken over.

The Court: I can't take that view.

Plaintiff's Exhibit 5 offered and received in evidence, also Plaintiff's Exhibit 4.

#### PLAINTIFF'S EXHIBIT NO. 5.

District of Columbia,

City and County of Washington,—ss.

Under the provisions of Section 884 of the Revised Statutes of the United States, I, Thomas P. Kane, Acting Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete copy of the original letter from The First National Bank, Salmon, Idaho, dated September 8, 1909, and of the whole of such original on file and of record in my office.

*In Testimony Whereof*, I have hereto subscribed my name, and caused my Seal of Office to be affixed to these presents, at the Treasury Department in the

City of Washington and District of Columbia, this  
19th day of March, A. D. 1914. (Seal.)

T. P. KANE,  
*Acting Comptroller of the Currency.*

Treasury Department.

Office of Comptroller of the Currency.

Form 2187.—Ed. 500—F. C., July 23-'13.

H. G. King, President. N. I. Andrews, Vice-Pres't.  
Ray Edwards, Cashier.

THE FIRST NATIONAL BANK

Salmon, Idaho, September 8, 1909.

T. P. Kane, Deputy Comptroller,  
Washington, D. C.

Sir:

Replying to your favor of the 10th ult., we beg to  
say that the Notes of

J. M. Moore for.....\$16,000.00

I. O. O. F. for.....\$16,000.00

W. J. Wittenberg.....\$10,000.00

have been paid in full. The Soule et al. Notes were  
taken by us from Langsdorf Company, Bankers,  
when buying the bank and will receive attention at  
maturity.

Yours truly,

JOHN C. SINCLAIR.

H. G. KING.

N. I. ANDREWS.

RAY EDWARDS.

Endorsed: Filed March 9, 1915.

A. L. Richardson, Clerk.



Mr. Biscoe: The first loans in excess of \$5,000.00 to any one person, firm or corporation, commencing with the month of March, 1909, is for \$5500.00 to W. H. Mulkey on October 18, 1909; on November 27th, 1909, Peter McKinney, \$14,000.00; on November 29th, Walter M. Grouell, \$500.00 and \$6,000.00 on the same date; on December 1, 1909, Bolts & Oltmer, one note for \$6,000.00, two notes for \$6,000.00, and one for \$500.00, all on December 1, 1909; on December 28, 1909, a loan to C. A. Carlson, \$6,000.00. Also on the same date a loan to F. E. Pattee, \$6,000.-00. On January 26, 1910, J. M. McPherson and H. S. Waters, a loan for \$8,000.00, also one for \$6,000.-00 on the same date, to the same parties. On February 2, 1910, to Mrs. A. Eckersell, a loan of \$3,000.00, and one for \$6,000.00, on the same date. On February 14, 1910, G. H. Monk & Co., a loan of \$8,000.00: On February 17, 1910, G. H. Monk & Co., \$6,000.00. On March 16, 1910, a loan was made to Peter McKinney, endorsed by W. H. Mulkey, \$7,100.00. On April 25, 1910, two loans made to W. Hammond, of \$1,000.00 and \$6,000.00, respectively. On July 6, 1910, there were two loans made to F. M. Pollard and S. A. Pollard, one of \$1,700.00, and the other of \$6,-250.00. On July 19, 1910, there were three loans made to H. W. Soule and others, of \$5,000.00 each. On December 10, 1910, loan made to the Salmon Lumber Company, \$6,000.00. On December 31, 1910, there were two loans made to L. T. Ramsey, one of \$6,000.00 and one of \$2,000.00. On January 12, 1911, there were two loans made to H. Brown, one of \$6,250.00 and one of \$6,500.00.

I have a record showing the overdrafts which were allowed by this bank between the 1st day of January, 1909, and the 8th day of June, 1911. Exhibits 6, 7 and 8 were compiled by me and represent to the best of my knowledge and belief the overdrafts shown on the ledgers of the First National Bank of Salmon, for the years 1909, 1910 and 1911, up to and including the 1st of May, and are correct as taken from the ledgers.

Plaintiff offered, and the same were received, in evidence the minutes of directors' meeting held January 12, 1909, shown on page 107 of the record book, also minutes of Board of Directors' meeting held Feb. 2nd, 1909, found at page 109; also the minutes of the Board of Directors of March 3, 1909, found at page 113, and the minutes of April 6th, of the Board of Directors, found at page 123, for the year 1909, and of May 4, 1909, at page 125, and the records of meetings of stockholders and directors, held between May 4, 1909, and June 7, 1911, inclusive, found at pages 127 to 194, both pages inclusive.

Plaintiff offered, and the same were received in evidence, the minutes of directors meeting held on January 18, 1910, and found at page 153.

#### "DIRECTORS' MEETING.

"The directors of the First National Bank of Salmon, elected at the stockholders' meeting held January 18, 1910, met at the bank January 18th, 1910, for the purpose of organization as a Board of Directors, the following directors being present: H. G.

King, N. I. Andrews, Geo. Buck, Fred Havemann, John Lottridge, J. C. Sinclair.

"The directors present having taken the oath of office required by law, proceeded with the organization of the board, and N. I. Andrews was elected chairman, and J. C. Sinclair secretary.

"H. G. King was then duly elected president of the bank, and his salary fixed at \$200.00 per month.

"N. I. Andrews was duly elected vice president of the bank, and his salary fixed at \$100.00 per month.

"John Lottridge was duly elected cashier of the bank, and his salary fixed at \$125.00 per month.

"Fred Havemann was duly elected assistant cashier, and his salary fixed at \$100.00 per month.

"J. C. Sinclair was duly elected secretary of the Board of Directors.

"H. G. King, N. I. Andrews and John Lottridge were duly appointed as a standing committee on loans and discounts, and an examining committee consisting of Geo. Buck, Fred Havemann and J. C. Sinclair was also appointed.

"The secretary then read a letter from the Comptroller of the Treasury, dated Washington, D. C., December 18, 1909, suggesting, among other matters, that the by-laws of the bank be amended so as to require the approval by the Board of Directors at the monthly meetings of all loans and discounts, and the recording of such approval in permanent form, and upon motion duly made and carried the following amendment to the by-laws was adopted by more

than a two-thirds majority of the board, all of the six directors present voting for such amendment.

“Resolved, that the by-laws of the First National Bank of Salmon be amended by adding Section 34, and which shall read as follows: The Board of Directors of the bank shall, at each monthly meeting, or oftener, examine and approve all loans and discounts, and such approval shall be recorded in a book kept for that purpose.” The officers of the bank having been duly elected, the board was duly organized.

“There being no further business for consideration, the meeting then adjourned.

“N. I. Andrews, Chairman. J. C. Sinclair, Secretary.”

(Biscoe) The indebtedness owing by the Salmon Lumber Company, on the 1st day of February, 1910, to the bank, was \$3500.00 upon a note. There is no record of it having ever been paid. There is a record of a loan of \$3500.00 outstanding on the 15th of February, 1910. Apparently on February 15, 1910, the account of the Salmon Lumber Company was overdrawn \$1597.92. On February 15, 1910, the Salmon Lumber Company gave a note to the First National Bank, numbered 2199, for \$2500.00.

Offered and received in evidence as Exhibit No. 9.

PLAINTIFF'S EXHIBIT NO. 9.

No. 2199.

Salmon, Idaho, July 1, 1910.

.....after date,  
for value received, and without grace, I, we or either  
of us promise to pay to the order of The First Na-

tional Bank of Salmon \$2500.00, Two Thousand Five Hundred Dollars, in lawful money of the United States of America, at The First National Bank, Salmon, Idaho, with interest thereon in like money from date until paid, at the rate of ten (10%) per cent per annum. Interest to be paid.....and, if not paid, the whole sum of both principal and interest to become immediately due and collectible.

And in case suit is instituted to collect this note, or any portion thereof, we promise to pay, besides costs and disbursements allowed by law, such additional sum as the court may adjudge reasonable as attorney's fees in said suit or action.

SALMON LUMBER CO., LTD.,

By F. W. Carl, President.

C. D. Slaughter, Secretary.

Due.....No. 40.....190...

P. O.....

Endorsed: Filed March 9, 1915.

A. L. Richardson, Clerk.

On July 27, 1910, there was a loan to the Salmon Lumber Company of \$3500.00, note No. 2475.

Offered and received in evidence as Exhibit No. 10.

# PLAINTIFF'S EXHIBIT NO. 10.

No. 2475. Salmon, Idaho, Nov. 2, 1910.

On demand after date, for value received, and without grace, I, we or either of us promise to pay to the order of The First National Bank of Salmon, \$3500.00, Thirty-five Hundred Dollars, in lawful money of the United States of America, at The First



National Bank, Salmon, Idaho, with interest thereon in like money from date until paid, at the rate of ten (10%) per cent per annum, interest to be paid . . . . . and if not so paid, the whole sum of both principal and interest to become immediately due and collectible.

And in case suit is instituted to collect this note, or any portion thereof, we promise to pay, besides costs and disbursements allowed by law, such additional sum as the court may adjudge reasonable as attorney's fees in said suit or action.

SALMON LUMBER CO., LTD.,

By C. D. Slaughter, Manager.

Due . . . . . No. 41 . . . . . 190 . . .

P. O. . . . .

Endorsed: Filed March 9, 1915.

A. L. Richardson, Clerk.

On December 10, 1910, there was a loan made to the Salmon Lumber Company, No. 2551, for \$6000.00.

On February 6, 1911, there was a loan made to the Salmon Lumber Company of \$3000.00, No. 2616.

Two last above mentioned notes offered and received in evidence as Exhibits No. 11 and 12, respectively.

PLAINTIFF'S EXHIBIT NO. 11.

No. 2551. Salmon, Idaho, December 10, 1910.

On demand after date, for value received, and without grace, I, we or either of us promise to pay to the order of The First National Bank of Salmon, \$6,-

000.00, Six Thousand Dollars, in lawful money of the United States of America, at The First National Bank, Salmon, Idaho, with interest thereon in like money from date until paid, at the rate of ten (10%) per cent per annum. Interest to be paid semi-annually and, if not so paid, the whole sum of both principal and interest to become immediately due and collectible.

And in case suit is instituted to collect this note, or any portion thereof, we promise to pay, besides costs and disbursements allowed by law, such additional sum as the court may adjudge reasonable as attorney's fees in said suit or action.

SALMON LUMBER CO., LTD.,

By F. W. Carl, President.

C. D. Slaughter, Manager.

Due.....190...

P. O., Salmon, Ida.

Endorsed: Filed March 9, 1915.

A. L. Richardson, Clerk.

PLAINTIFF'S EXHIBIT NO. 12.

No. 2616.             Salmon, Idaho, January 4, 1911.

Six months after date, for value received, and without grace, I, we or either of us promise to pay to the order of The First National Bank of Salmon, \$3000.00, Three Thousand Dollars, in lawful money of the United States of America, at The First National Bank, Salmon, Idaho, with interest thereon in like money from date until paid, at the rate of ten (10%) per cent per annum. Interest to be paid .....and if not so paid, the whole sum of

both principal and interest to become immediately due and collectible.

And in case suit is instituted to collect this note, or any portion thereof, we promise to pay, besides costs and disbursements allowed by law, such additional sum as the Court may adjudge reasonable as attorney's fees in said suit or action.

SALMON LUMBER CO., LTD.,  
F. W. Carl, President.  
C. D. Slaughter, Sec. and Mangr.

Due.....190...

P. O.....

Endorsed: Filed March 9, 1915.

A. L. Richardson, Clerk.

A loan was made to the Pollards on July 11, 1910, for \$1700.00, being No. 2459, and also another note on the same date, to the same parties, F. M. and S. A. Pollard, No. 2460, note dated June 29th, 1910, for \$6250.00.

The two notes, being Exhibits No. 13 and 14, were admitted in evidence.

#### PLAINTIFF'S EXHIBIT NO. 13.

No. 2459. Salmon, Idaho, July 11, 1910.

On demand, after date, for value received, and without grace, I, we or either of us promise to pay to the order of The First National Bank of Salmon, \$1700.00, Seventeen Hundred Dollars, in lawful money of the United States of America, at The First National Bank, Salmon, Idaho, with interest thereon in like money from date until paid, at the rate of

ten (10%) per cent per annum. Interest to be paid  
 .....and if not so paid, the whole sum of  
 both principal and interest to become immediately  
 due and collectible.

And in case suit is instituted to collect this note,  
 or any portion thereof, we promise to pay, besides  
 costs and disbursements allowed by law, such addi-  
 tional sum as the Court may adjudge reasonable as  
 attorney's fees in said suit or action.

Mrs. S. A. Pollard.

F. M. Pollard.

Due.....190...

P. O.....

Endorsed: Filed March 9, 1915.

A. L. Richardson, Clerk.

#### PLAINTIFF'S EXHIBIT NO. 14.

No. 2460. Salmon, Idaho, June 29, 1910.

Four months after date, for value received, and  
 without grace, I, we or either of us promise to pay to  
 the order of The First National Bank of Salmon,  
 \$6250.00, Six Thousand Two Hundred and Fifty  
 Dollars, in lawful money of the United States of  
 America, at The First National Bank, Salmon,  
 Idaho, with interest thereon in like money from date  
 until paid, at the rate of ten (10%) per cent per an-  
 num. Interest to be paid.....and if not so  
 paid, the whole sum of both principal and interest  
 to become immediately due and collectible.

And in case suit is instituted to collect this note,  
 or any portion thereof, we promise to pay, besides

costs and disbursements allowed by law, such additional sum as the Court may adjudge reasonable as attorney's fees in said suit or action.

Mrs. S. A. Pollard.

F. M. Pollard.

Due.....No. 36.....190...

P. O.....

Endorsed: Filed March 9, 1915.

A. L. Richardson, Clerk.

The records show a loan to Harry Brown on or about the 19th day of July, 1910, for \$3000.00. The number is 2474. The records do not show any payment of that loan. On January 12, 1911, there was another loan made to H. Brown, of \$6250.00, No. 2592, which was admitted in evidence as plaintiff's Exhibit 15.

PLAINTIFF'S EXHIBIT NO. 15.

No. 2592. Salmon, Idaho, January 2, 1911.

On demand, after date, for value received, and without grace, I, we or either of us promise to pay to the order of The First National Bank of Salmon, \$6250.00, Six Thousand Two Hundred and Fifty Dollars, in lawful money of the United States of America, at The First National Bank, Salmon, Idaho, with interest thereon in like money from date until paid, at the rate of ten (10%) per cent per annum. Interest to be paid semi-annually, and if not so paid, the whole sum of both principal and interest to become immediately due and collectible.

And in case suit is instituted to collect this note, or any portion thereof, we promise to pay, besides costs



and disbursements allowed by law, such additional sum as the Court may adjudge reasonable as attorney's fees in said suit or action.

Harry Brown.

Due.....190...

P. O.....

Endorsed: Filed March 9, 1915.

A. L. Richardson, Clerk.

On July 1, 1910, Harry Brown was indebted on notes to the bank, in the amount of \$7500.00, represented by four notes; none of them have been paid. On the 19th of July, 1910, there was one note of Harry Brown outstanding for \$750.00; also one for \$1000.00; also one for \$3500.00. At the close of business on that day \$3000.00 outstanding discounted on that day; and on the 19th day of July, 1910, the account of Harry Brown was overdrawn \$603.80, according to the ledger. I have a list of overdrafts due the bank at the time the receivership commenced. (Reading.)

George W. Barfield, \$14.50; C. G. Black, \$.56; A. F. Brantegam, \$78.62; Fred Brough, \$52.19; Harry Brown, \$110.00; James W. Caperen, \$384.88; Alice Carl, \$3.65; Fred Carl ranch account, \$364.95; W. M. Carpenter, \$14.77; Fred Crandall, \$2.36; P. J. Dempsey, \$35.35; Guy Edwards, \$1.22; A. E. Everett, \$11.99; A. E. Ferguson, \$6.36; George Geertson, \$3.02; C. F. Hamner, \$127.12; J. L. Harmon, \$7.00. There are about three times as many as I have read. The total amount of overdrafts as shown by the books of the company, at the time of the failure

of the bank, was \$9,222.26. Of that amount, since the failure, \$5,241.37 has been collected, and the balance still outstanding is \$3980.89. I have attempted to collect these, and have written them repeatedly; others are out of the jurisdiction and they are execution proof. I have made inquiry to ascertain whether they had property subject to execution.

Dr. C. F. Hanmer has no property in Salmon or that section of the country. The amount of his overdraft is \$127.12.

The Idaho Coal & Land Company is not in existence now, and has no property that I know of.

John Lottridge resides in California, and has not any property in Salmon or thereabouts.

Allen C. Merritt resides at Salmon. I have made inquiry and can find no property belonging to him in the State of Idaho.

The Salmon Land & Mines Company is out of existence, and upon inquiry I find no property in Idaho.

Bert Summers resides at Salmon, Idaho, but I find no property in the State belonging to him.

Z. T. Vincent has no property.

John R. Wheeler has no property; Mira L. Wheeler, his wife, no property.

George G. Wicklund we foreclosed a mortgage on the last property he had. There was no equity whatever after the foreclosure, to satisfy this overdraft, and he has nothing now.

Fred Carl is a son-in-law of H. G. King, and has no property in the State of Idaho.

F. M. Pollard has nothing.

I made these investigations with respect to these various persons and others whose accounts were overdrawn, in accordance with my employment and at the request of the Receiver, and acting for him.

C. K. Slaughter is the daughter of the defendant, H. G. King. A. K. Carl is the daughter of H. G. King. F. W. Carl is H. G. King's son-in-law. J. M. C. Lottridge is H. G. King's son-in-law. C. D. Slaughter is H. G. King's son-in-law. I am not sure that J. M. C. Lottridge is a son-in-law of H. G. King; I do not know exactly how he is related. I knew Mr. Lottridge as John Lottridge.

Exhibits 17 and 18 received in evidence.

PLAINTIFF'S EXHIBIT NO. 16.  
ARTICLES OF INCORPORATION OF THE SAL-  
MON LUMBER COMPANY, LIMITED.

*Know All Men by These Presents:* That we, the undersigned, have this day voluntarily associated ourselves together for the purposes of forming a corporation, under the laws of the State of Idaho.

*And We Hereby Certify:*

*First:* That the name of said corporation is THE SALMON LUMBER COMPANY, LIMITED.

*Second:* The purposes of which this corporation is formed are to operate a lumber yard, to buy and sell all kinds of lumber and building materials, to buy and sell coal and feed stuff, to buy and sell and own real estate, to buy and sell and operate saw mills and saw mill machinery, and more particularly to operate a lumber yard in Salmon, Idaho.

*Third:* That the place where its principal business is to be transacted shall be Salmon, Lemhi County, Idaho.

*Fourth:* That the term for which it is to be in existence is fifty (50) years from and after the date of its incorporation.

*Fifth:* That the number of its directors shall be five (5) and the names and residences of those who are appointed for the first year are:

C. K. Slaughter, Salmon, Idaho.

A. K. Carl, Salmon, Idaho.

F. W. Carl, Salmon, Idaho.

J. N. C. Lottridge, Salmon, Idaho.

C. D. Slaughter, Salmon, Idaho.

*Sixth:* That the amount of the capital stock of this corporation shall be Twenty-five Thousand (\$25,000.00) Dollars, divided into two hundred and fifty (250) shares of the par value of ONE HUNDRED DOLLARS each.

*Seventh:* That the amount of said capital stock which has been actually subscribed is Five Thousand (\$5000) Dollars, and the following are the names of the persons by whom the same has been subscribed:

Names.	Shares.	Amount.
C. K. Slaughter.....	1	\$ 100.00
A. K. Carl.....	1	100.00
F. W. Carl .....	23	2,300.00
J. N. C. Lottridge.....	1	100.00
C. D. Slaughter .....	24	2,400.00
		<hr/>
		\$ 5,000.00

*In Witness Whereof*, We have hereunto set our hands and seals this 21st day of August, 1909.

C. K. SLAUGHTER.

A. K. CARL.

F. W. CARL.

J. N. C. LOTTRIDGE.

C. D. SLAUGHTER.

Signed, sealed and delivered in the presence of Frank L. Plummer.

State of Idaho,

County of Lemhi,—ss.

On this 23rd day of August, in the year of our Lord one thousand nine hundred and nine, before me, the undersigned, a Notary Public in and for the said County and State, personally appeared C. K. Slaughter, A. K. Carl, F. W. Carl, J. N. C. Lottridge and C. D. Slaughter, known to me to be the persons whose names are subscribed to the within instrument, and they each duly acknowledged that they had executed the same.

*In Witness Whereof*, I have hereunto set my hand and affixed my official seal, the day last above written.

FRANK L. PLUMMER,

(Seal)

*Notary Public,*

Lemhi County, Idaho.

No. 145, Salmon Lumber Co. Filed August 23rd, 1909. W. C. Smith, County Recorder. By J. L. Kirtley, Jr., Deputy.

State of Idaho,

County of Lemhi,—ss.

I, J. L. Kirtley, Jr., County Recorder, in and for



the State and County aforesaid, hereby certify that the above and foregoing is a full, true and complete copy of the Articles of Incorporation of the Salmon Lumber Company, which articles are designated at Number 145, which were filed and remained on file in my office. And I further certify that the right of said corporation to do business in the State of Idaho was forfeited on December 1, 1912, for failure to pay the annual license tax as evidenced by the certificate of the Secretary of State of the State of Idaho, dated the 24th day of December, 1912.

*In Witness Whereof.* I have hereunto set my hand and affixed my official seal this 20th day of February, 1915.

J. L. KIRTLEY, JR.,

(Seal.)

*Clerk of the District Court.*

By.....Deputy.

Endorsed: Filed March 9, 1915.

A. L. Richardson, Clerk.

*In the District Court of the Sixth Judicial District  
of the State of Idaho, in and for the  
County of Lemhi.*

PLAINTIFF'S EXHIBIT NO. 17.

FRANK R. McCORMICK, Receiver for First National Bank, *Plaintiff,*

VS.

H. G. KING,

*Defendant.*

DEFAULT.

*In This Action,* The defendant, H. G. King, having been regularly served with process, and having failed to appear and answer the plaintiff's complaint



8th day of August, 1911, the Honorable Comptroller of the Currency, in charge of the said bank, determined the same to be in an insolvent condition, and appointed a Receiver therefor, who thereupon took charge of the business of the said bank for the purpose of winding up its affairs, and that the said Frank R. McCormick, the plaintiff herein, is now the duly appointed, qualified and acting Receiver thereof.

## II.

That at the time of the closing and suspension of the said bank, on or about the 8th day of June, 1911, and at the time of the appointment of a Receiver therefor, on or about the 8th day of August, 1911, the said H. G. King was the owner of and in the possession of 140 shares of the capital stock of the said First National Bank, of a par or face value of \$100.00 per share or a total of \$14,000.00 of the said capital stock, the same standing on the books of the said corporation in the name of the said H. G. King.

## III.

That on or about the 11th day of January, 1911, the Honorable Comptroller of the Currency of the United States levied an assessment upon the capital stock and stockholders of the said First National Bank, to the full amount of the capital stock thereof, or the sum of \$100.00 upon each and every share of the capital stock of the said corporation, held or owned by such stockholders respectively, at the time of the failure of the said bank and directed the plain-

tiff, Receiver herein, to take all necessary proceedings to enforce the liability of the said shareholders, a copy of which order of the Comptroller is attached to this complaint, marked "Exhibit A," and is made a part thereof.

#### IV.

That on or about the 23rd day of January, 1912, the plaintiff made demand upon the defendant herein for the payment of the amount so levied upon the shares of the said H. G. King, under the order of the said Comptroller of the Currency, but the defendant has failed and refused and still fails and refuses to pay the said sum or any part thereof, and the whole sum of \$14,000.00 is now due and owing from the defendant to the plaintiff as Receiver for the said First National Bank of Salmon.

*Therefore*, the plaintiff demands judgment against the defendant for the sum of \$14,000.00, together with interest thereon from the 12th day of February, 1912, and for his costs of suit herein expended.

F. J. COWEN,  
Residence, Salmon, Idaho,  
*Attorney for Plaintiff.*

State of Idaho,  
County of Lemhi,—ss.

Frank R. McCormick, being first duly sworn, deposes and says that he is the Receiver in charge of the affairs of the First National Bank of Salmon, the plaintiff herein, and makes this affidavit for and on its behalf; that he has read the foregoing com-

plaint and knows the contents thereof and that the same is true of his own knowledge.

FRANK R. McCORMICK.

Subscribed and sworn to before me this 30th day of March, 1912.

(Seal)

J. P. NIXON, JR.,

*Notary Public in and for Lemhi County, Idaho.*

My commission expires May 6, 1914.

No. 8080.

Assessment Upon Shareholders.

TREASURY DEPARTMENT.

Office of Comptroller of the Currency.

IN THE MATTER OF THE FIRST NATIONAL  
BANK OF SALMON, IDAHO.—“Exhibit A.”—  
Washington, D. C., January 11, 1912.

*To All Whom It May Concern:*

*Whereas*, Upon a proper accounting by the Receiver, heretofore appointed to collect the assets of The First National Bank, of Salmon, Idaho, and upon a valuation of the uncollected assets remaining in his hands, it appears to my satisfaction that in order to pay the debts of such association it is necessary to enforce the individual liability of the stockholders thereof to the extent hereinafter mentioned, as prescribed by Section 5151 and 5234 of the Revised Statutes of the United States.

*Now, Therefore*, By virtue of the authority vested in me by law, I do hereby make an assessment and requisition upon the shareholders of the said, The First National Bank, of Salmon, Idaho, for Fifty



Thousand Dollars, to be paid by them ratably on or before the twelfth day of February, 1912, and I hereby make demand upon each and every one of them for one hundred dollars upon each and every share of the capital stock of said association held or owned by them, respectively, at the time of its failure; and I hereby direct Frank R. McCormick, the Receiver heretofore appointed, to take all necessary proceedings, by suit or otherwise, to enforce to that extent the said individual liability of the said shareholders.

*In Witness Whereof*, I have hereto set my hand and caused my seal of office to be affixed to these presents at the City of Washington, in the District of Columbia, this eleventh day of January, A. D. 1912.

(Seal.)

LAWRENCE O. MURRAY,

*Comptroller of the Currency.*

(See inside.)

Office of the Receiver of the  
First National Bank of Salmon, Idaho.

Salmon, Idaho, January 11, 1912.

*You Will Please Take Notice*, That the Comptroller of the Currency has levied an assessment upon the stockholders of the First National Bank, of Salmon, Idaho, of One Hundred Dollars (\$100) a share, payable at the office of the Receiver on or before February 12, 1912. The Receiver is, however, authorized by the Comptroller to grant an extension, without interest, to shareholders who pay 25 per cent of the assessment on or before that date, and who will give a written obligation, satisfactorily guaranteed,

to pay 25 per cent additional on or before March 12, 1912; 25 per cent on or before April 12, 1912; and the remaining 25 per cent on or before May 12, 1912.

You are therefore requested to pay the assessment on.....shares of stock standing in your name, in accordance with the foregoing order and this notice, or suit will be commenced to enforce payment.

.....  
*Receiver First National Bank, Salmon, Idaho.*

To.....  
 .....  
 .....  
 .....

Filed March 30th, 1912. J. L. Kirtley, Jr., Clerk.  
 By W. W. Simmonds, Deputy.

*In the District Court of the Sixth Judicial District  
 of the State of Idaho, in and for  
 the County of Lemhi.*

FRANK R. McCORMICK, Receiver for The First  
 National Bank of Salmon, *Plaintiff,*  
 vs.

H. G. KING, *Defendant.*

### SUMMONS.

*The State of Idaho Sends Greeting to the Above-named Defendant.*

You are hereby required to appear in an action brought against you by the above-named plaintiff in the District Court of the Sixth Judicial District, State of Idaho, in and for the County of Lemhi, and to answer the complaint filed therein against you

(a copy of which is hereto attached) within twenty days (exclusive of the day of service) after the service on you of this summons, if served within this Judicial district; or if served elsewhere, within forty days. The said action is brought to obtain judgment for the sum of Fourteen Thousand (\$14,000.00) Dollars, together with interest thereon from the 12th day of February, 1912, assessment by Comptroller of the Currency, on 140 shares of stock of the said First National Bank, owned by you, all of which will more fully appear from the complaint on file herein, to which reference is hereby made.

And you are hereby notified, that if you fail to appear and answer the said complaint, as above required, the said plaintiff will take judgment against you for the amount demanded in the complaint.

Given under my hand and seal of the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Lemhi, this 23rd day of April in the year of our Lord one thousand nine hundred and twelve.

(Seal.)

J. L. KIRTLEY, JR., Clerk.

By.....

Deputy Clerk.

F. J. Cowen, Attorney for Plaintiff.

Salmon, Idaho, Residence.

State of Idaho,

County of Lemhi,—ss.

I hereby certify, that I received the within summons on the 24th day of May, 1912, and personally served the same on the 25th day of May, 1912, on

H. G. King, the defendant named in said summons, by delivering to H. G. King, the said defendant, personally, at Salmon, in the County of Lemhi, a copy of said summons, together with a copy of the complaint in said action, attached to said copy of summons.

Dated this 25th day of May, 1912.

JAMES MAHAFFEY, Sheriff.

Sheriff Fee:

To Copy Summons . . . .	\$ .60
To Mileage . . . . .	.20
To Service . . . . .	1.00
To Return . . . . .	.20
	<hr/>
	\$2.00

Filed May 27, 1912. J. L. Kirtley, Jr., Clerk.  
By W. W. Simmonds, Deputy Clerk.

*In the District Court of the Sixth Judicial District  
of the State of Idaho, in and for the  
County of Lemhi.*

FRANK R. McCORMICK, Receiver for The First  
National Bank of Salmon, *Plaintiff,*  
vs.

H. G. KING, *Defendant.*

# PRAECIPE.

*To the Clerk of the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Lemhi.*

Sir:

You will enter the default of the defendant, H. G. King, in the above entitled action and thereupon

enter judgment by default in favor of the plaintiff and against the said defendant as prayed for in the complaint on file in this action, for failure of the defendant to enter appearance in the said action, and make answer to the said complaint.

Dated this 8th day of July, 1912.

F. J. COWEN,  
Residence: Salmon, Idaho,  
*Attorney for Plaintiff.*

Filed July 8, 1912. J. L. Kirtley, Jr., Clerk.

*In the District Court of the Sixth Judicial District  
of the State of Idaho, in and for  
the County of Lemhi.*

FRANK R. McCORMICK, Receiver for The First  
National Bank of Salmon, *Plaintiff*,  
vs.

H. G. KING, *Defendant.*

JUDGMENT BY DEFAULT BY CLERK.

In this action the defendant, H. G. King, having been regularly served with process, and having failed to appear and answer the plaintiff's complaint filed herein, the legal time for answering having expired, and no answer or demurrer having been filed, the default of the said defendant, H. G. King, in the premises having been duly entered according to law, upon application of said plaintiff to the Clerk, judgment is hereby entered against said defendant, in pursuance of the prayer of said complaint.

Wherefore, by virtue of the law, and by reason of the premises aforesaid, it is ordered, adjudged and decreed, that the said plaintiff do have and re-



cover from the said defendant the sum of Fourteen Thousand Three Hundred Ninety-seven and 46-100 Dollars (\$14,397.46), lawful money of the United States, with interest thereon at the rate of seven per cent per annum from the date hereof until paid, together with said plaintiff's costs and disbursements incurred in this action, amounting to the sum of .....Dollars (\$.....).

Judgment rendered July 8, 1912.

(Seal.) J. L. KIRTLEY, JR., Clerk.

Filed July 8, 1912. J. L. Kirtley, Jr., Clerk.

*In the District Court of the Sixth Judicial District  
of the State of Idaho, in and for  
the County of Lemhi.*

FIRST NATIONAL BANK, by Frank R. McCormick,  
Plaintiff,

vs.

H. G. KING, Defendant.

I, the undersigned, Clerk of the District Court of the Sixth Judicial District of said State, in and for said County, do hereby certify the foregoing to be a true copy of the judgment entered into the above entitled action, and recorded in Judgment Book B of said Court, page 77, and I further certify that the foregoing papers hereto annexed constitute the Judgment Roll in said action.

Witness my hand and seal of said Court this 27th day of July, A. D. 1912.

(Seal.) J. L. KIRTLEY, JR., Clerk.

Judgment Roll filed July 27, 1912.

J. L. Kirtley, Jr., Clerk.



Sixth Judicial District of the State of Idaho, in and for the County of Lemhi, in favor of Frank R. McCormick, Receiver for the First National Bank of Salmon, plaintiff, and against H. G. King, defendant, for the sum of Fourteen Thousand Three Hundred Ninety-seven and 46-100 Dollars, with interest thereon at the rate of seven per cent per annum from the 8th day of July, A. D. 1912, together with the costs of suit taxed at.....Dollars, and the judgment roll filed in said case in said County, and judgment docketed in the Clerk's office of said Court, and the judgment roll filed in said case in said County, and judgment docketed in the Clerk's office of said Court, on the 8th day of July, 1912, and the sum of Seventeen Thousand One and 10-100 Dollars, is now (at the date of this writ) actually due on said judgment.

Now, you, the said Sheriff, are hereby required to make the said sums due on the said judgment for damages, with interest as aforesaid, and costs and accruing costs, to satisfy the said judgment out of the personal property of said debtor; or, if sufficient personal property of said debtor cannot be found, then out of the real property in your County belonging to H. G. King on the day whereon said judgment was docketed, in the said County, or at any time thereafter and make return of this writ within 60 days after your receipt thereof, with what you have done indorsed hereon.

In testimony whereof, I, J. L. Kirtley, Jr., Clerk of the said District Court, have hereunto set my hand

and affixed the seal of said Court, at the Court House in the County of Lemhi, State of Idaho, this 20th day of February, A. D. 1915.

(Seal.)

J. L. KIRTLEY, JR., Clerk.

By W. W. SIMMONDS, Deputy Clerk.

State of Idaho,

County of Lemhi,—ss.

I hereby certify that I received the within execution on the 20th day of February, 1915; I further certify that after due and diligent search and inquiry, I have been unable to find any property belonging to the within-named defendant, not exempt from execution in this County, out of which to make said judgment, and return herewith this writ not served.

Dated this 25th day of February, A. D. 1915.

THOS. J. STROUD,

*Sheriff in and for Lemhi County.*

L. A. VOGLER, Deputy.

State of Idaho,

County of Lemhi,—ss.

I, J. L. Kirtley, Jr., Clerk of the above-entitled Court, hereby certify that the above and foregoing is a full, true and complete copy of an execution issued out of this Court and the Sheriff's return thereon, as filed in this office on the 25th day of February, 1915.

*In Witness Whereof*, I have hereunto set my hand and affixed the seal of the said Court this 4th day of March, 1915.

(Seal.)

J. L. KIRTLEY, JR., Clerk.

*District Court of the Sixth Judicial District, State  
of Idaho, County of Lemhi.*

FRANK R. McCORMICK, Receiver for The First  
National Bank of Salmon, *Plaintiff,*

vs.

H. G. KING, *Defendant.*

EXECUTION.

Judgment .....

Costs .....

Accruing Costs .....

Total .....

Filed February 25, 1915.

J. L. KIRTLEY, JR.,  
*Clerk District Court.*

By W. W. SIMMONDS, Deputy.

Endorsed: Filed March 9, 1915.

A. L. Richardson, Clerk.

Exhibits 19, 20, 21 and 22 received in evidence.

PLAINTIFF'S EXHIBIT NO. 19.

*In the District Court of the Sixth Judicial District  
of the State of Idaho, in and for  
the County of Lemhi.*

FRANK R. McCORMICK, Receiver for The First  
National Bank of Salmon, *Plaintiff,*

vs.

RAY EDWARDS, *Defendant.*

DEFAULT.

*In This Action, The defendant, having filed his de-  
murrer herein, which was overruled by the Court,  
and having failed to appear and further answer the*



plaintiff's complaint filed herein, and the time allowed by law for answering having expired, the default of the said defendant, Ray Edwards, in the premises is hereby duly entered according to law.

Witness my hand and the seal of said Court this 30th day of September, A. D. 1912.

(Seal.)                                 J. L. KIRTLEY, JR., Clerk.

*In the District Court of the Sixth Judicial District  
of the State of Idaho, in and for  
the County of Lemhi.*

FRANK R. McCORMICK, Receiver for the First  
National Bank of Salmon,                                 *Plaintiff,*  
vs.

RAY EDWARDS,                                 *Defendant.*

### COMPLAINT.

The plaintiff complains and for cause of action against the defendant alleges:

#### I.

That the First National Bank of Salmon is a corporation duly organized and existing under the national banking laws of the United States, having a capital stock of \$50,000.00, divided into 500 shares of the par value of \$100.00 per share, and with its principal place of business at Salmon, in the County of Lemhi, State of Idaho, and has at all the times hereinafter mentioned been doing a general banking business at said Salmon City, until on or about the 8th day of June, 1911, when the said bank voluntarily suspended business; and that on or about the 8th day of August, 1911, the Honorable Comptroller

of the Currency, in charge of the said bank, determined the same to be in an insolvent condition, and appointed a Receiver therefor, who thereupon took charge of the business of the said bank for the purpose of winding up its affairs, and that the said Frank R. McCormick, the plaintiff herein, is now the duly appointed, qualified and acting Receiver thereof.

## II.

That at the time of the closing and suspension of the said bank, on or about the 8th day of June, 1911, and at the time of the appointment of a Receiver therefor, on or about the 8th day of August, 1911, the said Ray Edwards was the owner of and in the possession of 25 shares of the capital stock of the said First National Bank, of a par or face value of \$100.00 per share or a total of \$2500.00 of the said capital stock, the same standing on the books of the said corporation in the name of the said Ray Edwards.

## III.

That on or about the 11th day of January, 1911, the Honorable Comptroller of the Currency of the United States levied an assessment upon the capital stock and stockholders of the said First National Bank to the full amount of the capital stock thereof, or the sum of \$100.00 upon each and every share of the capital stock of the said corporation, held or owned by such stockholders respectively, at the time of the failure of the said bank and directed the plaintiff

Receiver herein, to take all necessary proceedings to enforce the liability of the said shareholders, a copy of which order of the Comptroller is attached to this complaint, marked "Exhibit A," and is made a part thereof.

#### IV.

That on or about the 23rd day of January, 1912, the plaintiff made demand upon the defendant herein, for the payment of the amount so levied upon the shares of the said Ray Edwards, under the order of the said Comptroller of the currency, but the defendant has failed and refused and still fails and refuses to pay the said sum or any part thereof, and the whole sum of \$2500.00 is now due and owing from the defendant to the plaintiff as Receiver for the said First National Bank of Salmon.

*Wherefore*, the plaintiff demands judgment against the defendant for the sum of \$2500.00, together with interest thereon from the 12th day of February, 1912, and for his costs of suit herein expended.

F. J. COWEN,

Residence: Salmon, Idaho,

*Attorney for Plaintiff.*

State of Idaho,

County of Lemhi,—ss.

Frank R. McCormick, being first duly sworn, deposes and says that he is the Receiver in charge of the affairs of the First National Bank of Salmon, the plaintiff herein, and makes this affidavit for and on its behalf; that he has read the foregoing complaint

and knows the contents thereof, and that the same is true of his own knowledge.

FRANK R. McCORMICK.

Subscribed and sworn to before me this 30th day of March, 1912.

J. P. NIXON, JR.,

*Notary Public in and for Lemhi County, Idaho.*

(Seal.)

My commission expires May 6, 1914.

No. 8080.

Assessment Upon Shareholders.

TREASURY DEPARTMENT.

Office of Comptroller of the Currency.

IN THE MATTER OF THE FIRST NATIONAL  
BANK OF SALMON, IDAHO.—Exhibit "A."—  
Washington, D. C., January 11, 1912.

*To All Whom It May Concern:*

*Whereas*, Upon a proper accounting by the Receiver, heretofore appointed to collect the assets of the First National Bank, of Salmon, Idaho, and upon a valuation of the uncollected assets remaining in his hands, it appears to my satisfaction that in order to pay the debts of such association it is necessary to enforce the individual liability of the stockholders thereof to the extent hereinafter mentioned, as prescribed by Section 5151 and 5234 of the Revised Statutes of the United States.

*Now, Therefore*, By virtue of the authority vested in me by law, I do hereby make an assessment and requisition upon the shareholders of the said, the First National Bank, of Salmon, Idaho, for Fifty

Thousand Dollars, to be paid by them ratably on or before the twelfth day of February, 1912, and I hereby make demand upon each and every one of them for One Hundred Dollars upon each and every share of the capital stock of said association, held or owned by them respectively, at the time of its failure; and I hereby direct Frank R. McCormick, the Receiver heretofore appointed, to take all necessary proceedings, by suit or otherwise, to enforce to that extent the said individual liability of the said shareholders.

*In Witness Whereof*, I have hereto set my hand and caused my seal of office to be affixed to these presents at the City of Washington, in the District of Columbia, this eleventh day of January, A. D. 1912.

(Seal.)

LAWRENCE O. MURRAY,

*Comptroller of the Currency.*

(See inside.)

Office of the Receiver of the  
FIRST NATIONAL BANK OF SALMON, IDAHO.

Salmon, Idaho, January 11, 1912.

*You Will Please Take Notice*, That the Comptroller of the Currency has levied an assessment upon the stockholders of The First National Bank, of Salmon, Idaho, of One Hundred Dollars (\$100) a share, payable at the office of the Receiver, on or before February 12, 1912. The Receiver is, however, authorized by the Comptroller to grant an extension, without interest, to shareholders who pay 25 per cent of the assessment on or before that date, and who will give a written obligation, satisfactorily guaranteed,



to pay 25 per cent additional on or before March 12, 1912; 25 per cent on or before April 12, 1912; and the remaining 25 per cent on or before May 12, 1912.

You are therefore requested to pay the assessment on . . . . . shares of stock standing in your name, in accordance with the foregoing order and this notice, or suit will be commenced to enforce payment.

Receiver First National Bank, Salmon, Idaho.

To . . . . .  
 . . . . .  
 . . . . .  
 . . . . .

Filed March 30, 1912. J. L. Kirtley, Jr., Clerk.  
 By W. W. Simmonds, Deputy.

*In the District Court of the Sixth Judicial District  
 of the State of Idaho, in and for  
 the County of Lemhi.*

FRANK R. McCORMICK, Receiver for the First  
 National Bank of Salmon, *Plaintiff,*  
 vs.

RAY EDWARDS, *Defendant.*

DEMURRER.

The defendant demurs to the complaint herein, and for cause of demurrer alleges:

That the complaint does not state facts sufficient to constitute a cause of action.

GEO. W. PADGHAM,  
*Attorney for Defendant,*  
 Residence: Salmon, Idaho.

*Attorney for Plaintiff.*

Filed June 8, 1912. J. L. Kirtley, Jr., Clerk. By  
W. W. Simmonds, Deputy.

FRANK R. McCORMICK, Receiver for the First  
National Bank of Salmon, *Plaintiff,*

VS.

RAY EDWARDS.

*Defendant.*

In this action the demurrer of the defendant was submitted without argument and overruled by the Court, and the defendant, failing and refusing to plead further, it is ordered that judgment by default be and is hereby ordered entered in accordance with the prayer of the complaint.

State of Idaho,

County of Lemhi,—ss.

I, J. L. Kirtley, Jr., Clerk of the District Court, do hereby certify that the above and foregoing is one of the orders made on the 30th day of September, 1912, and entered in Record of Proceedings of the District Court, on page 95.

(Seal.)

J. L. KIRTLEY, JR., Clerk.

*In the District Court of the Sixth Judicial District  
of the State of Idaho, in and for  
the County of Lemhi.*

FRANK R. McCORMICK, Receiver for the First  
National Bank of Salmon, *Plaintiff,*

VS.

RAY EDWARDS,

*Defendant.*

## JUDGMENT BY DEFAULT.

This cause came on regularly for trial on the 30th day of September, 1912, to be heard before the Court sitting without a jury, and the demurrer of the defendant submitted without argument, and said demurrer was overruled by the Court, and the defendant, failing and refusing to further answer the plaintiff's complaint herein, it is ordered that the default of the defendant be and is hereby duly entered according to law, and that the plaintiff have judgment in accordance with the prayer of the complaint.

Wherefore, by reason of the law and the premises aforesaid, it is ordered, adjudged and decreed, that the plaintiff have and recover from the said defendant the principal sum of \$2500.00, with interest thereon at the rate of 7% per annum from the 12th day of February, 1912, amounting to the further sum of \$131.25, or a total sum of \$2631.25, together with the plaintiff's costs and disbursements herein, amounting to \$15.80, for which sums execution may issue.

Judgment entered November 14, 1912.

(Seal.) J. L. KIRTLEY, JR., Clerk.

Filed November 16, 1912. J. L. Kirtley, Jr., Clerk.  
By W. W. Simmonds, Deputy.

*In the District Court of the Sixth Judicial District  
of the State of Idaho, in and for  
the County of Lemhi.*

FRANK R. McCORMICK, Receiver for the First  
National Bank of Salmon, Plaintiff,

VS.

RAY EDWARDS,

Defendant.

I, the undersigned, Clerk of the District Court of the Sixth Judicial District of said State, in and for said County, do hereby certify the foregoing to be a true copy of the judgment entered into the above entitled action, and recorded in Judgment Book B of said Court, page 91. And I further certify that the foregoing papers hereto annexed constitute the judgment roll in said action.

Witness my hand and the seal of said Court this 18th day of November, A. D. 1912.

(Seal.)                             J. L. KIRTLEY, JR., Clerk.

By W. W. SIMMONDS, Deputy Clerk.

No. 645. Judgment Roll. Filed November 18, 1912. J. L. Kirtley, Jr., Clerk. By W. W. Simmonds, Deputy Clerk.

State of Idaho,  
County of Lemhi,—ss.

I, the undersigned, Clerk of the District Court of the Sixth Judicial District of the said State, in and for said County, do hereby certify that the foregoing is a true copy of the judgment entered into the above entitled action, and recorded in Judgment Book B of said Court, page 91. And I further certify that the foregoing papers hereto annexed constitute the judgment roll in said action. And I still further certify that no satisfaction or partial satisfaction has ever been entered upon the records relating to the judgment herein incorporated.

*In Witness Whereof*, I have hereunto set my hand

and affixed my official seal this 20th day of February,  
1915.

J. L. KIRTLEY, JR.,

(Seal.)

Clerk.

Endorsed: Filed March 9, 1915.

A. L. Richardson, Clerk.

PLAINTIFF'S EXHIBIT NO. 20.

*In the District Court of the Sixth Judicial District  
of the State of Idaho, in and for  
the County of Lemhi.*

FRANK R. McCORMICK, Receiver for the First  
National Bank of Salmon, *Plaintiff,*

vs.

RAY EDWARDS, *Defendant.*

EXECUTION.

*To the Sheriff of Lemhi County, Greetings:*

*Whereas, on the 14th day of November, A. D. 1912, a judgment was rendered in the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Lemhi, in favor of Frank R. McCormick, Receiver for the First National Bank of Salmon, plaintiff, and against Ray Edwards, defendant, for the sum of Twenty-five Hundred Dollars, with interest thereon at the rate of seven per cent per annum from the 12th day of February, A. D. 1912, together with the costs of suit, taxed at Fifteen and 80-100 Dollars, and the judgment roll filed in said case in said County, and judgment docketed in the Clerk's office of said Court, on the 12th day of November, 1912, and the sum of Three Thousand*



Sixty-three and 89-100 Dollars, is now (at the date of this writ) actually due on said judgment.

Now, you, the said Sheriff, are hereby required to make the said sums due on the said judgment for damages, with interest as aforesaid, and costs and accruing costs, to satisfy the said judgment out of the personal property of said debtor; or, if sufficient personal property of said debtor cannot be found, then out of the real property in your County belonging to Ray Edwards on the day whereon said judgment was docketed, in the said County, or at any time thereafter, and make return of this writ within 60 days after your receipt thereof, with what you have done indorsed hereon.

In testimony whereof, I, J. L. Kirtley, Jr., Clerk of the said District Court, have hereunto set my hand and affixed the seal of said Court, at the Court House in the County of Lemhi, State of Idaho, this 20th day of February, A. D. 1915.

(Seal.)

J. L. KIRTLEY, JR., Clerk.

By W. W. SIMMONDS, Deputy Clerk.

State of Idaho,  
County of Lemhi,—ss.

I hereby certify that I received the within execution on the 20th day of February, 1915, and, after due and diligent search and inquiry, I have been unable to find any property belonging to the within-named defendant, not exempt from execution, in the County of Lemhi, out of which to satisfy said judg-

ment, or any part of said judgment, and herewith return this writ not satisfied.

Dated this 25th day of February, A. D. 1915.

THOMAS J. STROUD, Sheriff.

L. A. VOGLER, Deputy.

State of Idaho,  
County of Lemhi,—ss.

I, J. L. Kirtley, Jr., Clerk of the above-entitled Court, hereby certify that the above and foregoing is a full, true and complete copy of an execution issued out of this Court and the Sheriff's return thereon, as filed in this office on the 25th day of February, 1915.

*In Witness Whereof*, I have hereunto set my hand and affixed the seal of said Court on this the 4th day of March, 1915.

J. L. KIRTLEY, JR.,

(Seal.)

*Clerk.*

Endorsed: Filed Feb'y 25, 1915. J. L. Kirtley, Jr., Clerk. By W. W. Simmonds, Deputy.

PLAINTIFF'S EXHIBIT NO. 21.

*In the District Court of the Sixth Judicial District  
of the State of Idaho, in and for  
the County of Lemhi.*

FIRST NATIONAL BANK OF SALMON, a Corporation, by Frank R. McCormick, Receiver,  
*Plaintiff,*

vs.

HARRY BROWN, *Defendant.*

DEFAULT.

*In This Action*, the defendant, Harry Brown, having been regularly served with process, and having

failed to appear and answer the plaintiff's complaint filed herein, and the time allowed by law for answering having expired, the default of the said defendant, Harry Brown, in the premises is hereby duly entered according to law.

.....  
a true copy.

Attest: My hand and the seal of the said Court  
this 28th day of September, A. D. 1914.

(Seal.)

J. L. KIRTLEY, JR., Clerk.

*In the District Court of the Sixth Judicial District  
of the State of Idaho, in and for  
the County of Lemhi.*

FIRST NATIONAL BANK OF SALMON, a Cor-  
poration, by Frank R. McCormick, Receiver,  
*Plaintiff,*

vs.

HARRY BROWN,

*Defendant.*

### COMPLAINT.

The plaintiff complains, and, for cause of action against the defendant, alleges:

#### I.

That the First National Bank of Salmon is a corporation duly organized and existing under the national banking laws of the United States, and with its principal place of business at Salmon, in the County of Lemhi, State of Idaho, and has at all the times hereinafter mentioned been doing a general banking business at said Salmon until on or about the 8th day of June, 1911, when the said bank voluntarily sus-

pending business; and that, on or about the 8th day of August, 1911, the Honorable Comptroller of the Currency of the United States, in charge of the said bank, determined the same to be in an insolvent condition, and appointed a Receiver therefor, which Receiver thereupon took charge of the business of the said bank for the purpose of winding up its affairs, and the said Frank R. McCormick, the plaintiff herein, is now the duly appointed, qualified and acting Receiver thereof for the said purpose.

## II.

That, on or about the 2nd day of January, 1911, the defendant, Harry Brown, made, executed and delivered to the said First National Bank of Salmon, his certain promissory note, wherein and whereby he agreed to pay to the said First National Bank, on demand, the sum of \$6500.00, with interest thereon at the rate of 10 per cent per annum; and the said defendant further agreed therein that in case suit should be instituted to collect the said note, or any part thereof, he would pay such additional sum as the Court might adjudge reasonable as an attorney fee in said suit or action; which said note is in words and figures as follows:

No. 5595.                      Salmon, Idaho, January 2, 1911.

On demand, after date, for value received, and without grace, I, we or either of us promise to pay to the order of the First National Bank of Salmon, \$6,500.00, Six Thousand Five Hundred Dollars, in lawful money of the United States of America, at the First National Bank, Salmon, Idaho, with interest

thereon in like money from date until paid, at the rate of 10 per cent per annum, interest to be paid semi-annually, and if not so paid, the whole sum of both principal and interest to become immediately due and collectible.

And in case suit is instituted to collect this note, or any portion thereof, we promise to pay, besides costs and disbursements allowed by law, such additional sum as the Court may adjudge reasonable as attorney's fees in said suit or action.

(Signed:) HARRY BROWN.

Due.....190...

P. O.....

### III.

That the defendant has not paid the said note, nor any part thereof, and the whole of the said principal sum of \$6,500.00, together with interest thereon from the 2nd day of January, 1911, is now due and owing from the defendant to the plaintiff herein.

### IV.

That the payment of the said note was demanded of the said defendant on or about the 11th day of August, 1911, but the defendant has failed and refused to pay the same.

### V.

That \$500.00 is a reasonable attorney's fee to be allowed to the plaintiff for the collection of said note in this action.

For a second and further cause of action against the defendant, the plaintiff complains and alleges:



## I.

The plaintiff re-alleges paragraph one of its first cause of action herein, and makes the same part of this second cause of action.

## II.

That on or about the 2nd day of January, 1911, the defendant, Harry Brown, made, executed and delivered to the First National Bank of Salmon, his certain promissory note, wherein he promised and agreed to pay to the said First National Bank, on demand, the sum of \$6,250.00, with interest thereon, at the rate of 10 per cent per annum; and the said defendant further agreed therein that in case suit should be instituted to collect the said note, or any part thereof, he would pay such additional sum as the Court might adjudge reasonable as an attorney's fee in said suit or action; which said note is in words and figures as follows:

No. 5595.                      Salmon, Idaho, January 2, 1911.

On demand, after date, for value received, and without grace, I, we or either or us promise to pay to the order of The First National Bank of Salmon, \$6,250.00, Six Thousand Two Hundred Fifty Dollars, in lawful money of the United States of America, at the First National Bank, Salmon, Idaho, with interest thereon in like money from date until paid, at the rate of 10 per cent per annum, interest to be paid semi-annually, and if not so paid, the whole sum of both principal and interest to become immediately due and collectible.

And in case suit is instituted to collect this note, or any portion thereof, we promise to pay, besides costs and disbursements allowed by law, such additional sum as the Court may adjudge reasonable as attorney's fees in said suit or action.

(Signed:) HARRY BROWN.

Due.....190...

P. O.....

### III.

That the defendant has not paid the said note, nor any part thereof, and the whole of the said principal sum of \$6,250.00, together with interest thereon, from the defendant to the plaintiff herein.

### IV.

That the payment of the said note was demanded of the said defendant on or about the 11th day of August, 1911, but the defendant has failed and refused to pay same.

### V.

That \$500.00 is a reasonable attorney's fee to be allowed to the plaintiff for the collection of said note in this action.

*Wherefore,* The plaintiff demands judgment against the defendant, for the sum of \$12,750.00, with interest thereon at 10 per cent, from the 2nd day of January, 1911, and for the sum of \$1,000.00 as attorney's fees in this action, together with plaintiff's costs and disbursements incurring herein.

F. J. COWEN,

Residence: Salmon, Idaho,

*Attorney for Plaintiff.*

State of Idaho,  
County of Lemhi,—ss.

Frank R. McCormick, being first duly sworn, deposes and says: That he is the Receiver of the First National Bank of Salmon, a corporation, plaintiff herein, and makes this affidavit for and on its behalf; that he has read the foregoing complaint and knows the contents thereof, and that the same he believes to be true.

FRANK R. McCORMICK.

Subscribed and sworn to before me this 18th day  
of June, 1913.                      ENOCH W. WHITCOMB,  
(Seal.)                                      *Notary Public.*

No. 759. Filed June 18, 1913. J. L. Kirtley, Jr., Clerk. By W. W. Simmonds, Deputy.

*In the District Court of the Sixth Judicial District  
of the State of Idaho, in and for  
the County of Lemhi.*

FIRST NATIONAL BANK OF SALMON, a Cor-  
poration, by Frank R. McCormick, Receiver,  
*Plaintiff,*

VS.

HARRY BROWN, *Defendant.*

I, A. L. Kirk, being duly sworn, deposes and says: That he is, and at all times mentioned herein was, over the age of twenty-one years, and not a party to the within action; that he received the within and hereunto annexed summons on the 9th day of January, 1914, and personally served the same upon Harry Brown, the within-named defendant, on the

210     *Frank R. McCormick, Receiver, etc., vs.*

17th day of June, 1914, by showing the within original and delivering a copy thereof, together with a copy of the complaint in the said action, to the said Harry Brown, personally, in the County of Lemhi, State of Idaho.

(Seal.)

A. L. KIRK.

Subscribed and sworn to before me this 15th day of July, 1914.

PERCY ANDERSON,

(Seal.)

*Notary Public.*

My commission expires March 25, 1918.

### IN THE DISTRICT COURT.

*In the District Court of the Sixth Judicial District,  
State of Idaho, County of Lemhi.*

FIRST NATIONAL BANK OF SALMON, a Corporation, by Frank R. McCormick, Receiver,  
*Plaintiff,*

vs.

HARRY BROWN,

*Defendant.*

### SUMMONS.

*The State of Idaho Sends Greeting to the Above-named Defendant.*

*You are Hereby Required to Appear* In an action brought against you by the above-named plaintiff in the District Court of the Sixth Judicial District, State of Idaho, in and for the County of Lemhi, and to answer the complaint filed therein against you (a copy of which is hereto attached) within twenty days (exclusive of the day of service) after the service on you of this summons, if served within this judicial district; or, if served elsewhere, within forty days.

The said action is brought to obtain judgment against the defendant for the sum of \$12,750.00, with interest thereon from January 2, 1911, the same being due on two certain promissory notes, and for the sum of \$1000.00 as attorney's fees and for plaintiff's costs and disbursements incurred herein.

And you are hereby notified, that if you fail to appear and answer the said complaint, as above required, the said plaintiff will take judgment against you as demanded in the complaint, a copy of which is hereto attached, and to which reference is hereby made.

Given under my hand and seal of the said District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Lemhi, this 18th day of June, in the year of our Lord one thousand nine hundred and thirteen.

(Seal.)

F. J. COWEN,

*Attorney for Plaintiff.*

Salmon, Idaho, Residence.

J. L. KIRTLEY, JR., Clerk.

Filed: No. 759. Jan'y 22nd, 1914. J. L. Kirtley, Jr., Clerk. By W. W. Simmonds, Deputy Clerk.

*In the District Court of the Sixth Judicial District  
of Idaho, in and for the County of Lemhi.*

FIRST NATIONAL BANK OF SALMON, a Corporation, by Frank R. McCormick, Receiver,  
*Plaintiff,*

vs.

HARRY BROWN,

*Defendant.*



JUDGMENT BY DEFAULT.

In this action the defendant, Harry Brown, having been regularly served with summons and having failed to appear and answer the plaintiff's complaint, the legal time for answering having expired and the default of the defendant, Harry Brown, having been ordered and duly entered according to law, upon application of the plaintiff to the Court, judgment is hereby entered against the said defendant, Harry Brown, in pursuance of the order of the Court, in the sum of Seventeen Thousand Four Hundred Ninety-eight and 39-100 Dollars (\$17,498.39), principal and interest, together with One Thousand Dollars (\$1,000.00) as attorney's fees.

*Wherefore*, By virtue of the law, and by reason of the premises aforesaid, it is ordered, adjudged and decreed, that the said plaintiff do have and recover from the said defendant the sum of Eighteen Thousand Four Hundred Ninety-eight and 39-100 Dollars (\$18,498.39), with interest at the rate of seven per cent per annum from date until paid.

Judgment rendered September 28, 1914.

Witness, the HONORABLE J. M. STEVENS,  
(Seal.) *Judge.*

By J. L. KIRTLEY, JR., Clerk.

Judgment filed December 14, 1914.

J. L. Kirtley, Jr., Clerk.

*In the District Court of the Sixth Judicial District  
of the State of Idaho, in and for  
the County of Lemhi.*

FIRST NATIONAL BANK OF SALMON, a Cor-  
poration, by Frank R. McCormick, Receiver,  
*Plaintiff,*

vs.

HARRY BROWN, *Defendant.*

I, the undersigned, Clerk of the District Court of the Sixth Judicial District of said State, in and for said County, do hereby certify the foregoing to be a true copy of the judgment entered in the above-entitled action, and recorded in Judgment Book B of said Court, page 180. And I further certify that the foregoing papers hereto annexed constitute the judgment roll in said action.

Witness my hand and the seal of said Court this  
14th day of Dec., A. D. 1914.

(Seal.) J. L. KIRTLEY, JR., Clerk.

No. 759. Judgment Roll filed Dec. 14, 1914.

J. L. Kirtley, Jr., Clerk.

State of Idaho,  
County of Lemhi,—ss.

I, the undersigned, Clerk of the District Court of the Sixth Judicial District of said State, in and for said County, do hereby certify that the foregoing is a true copy of the judgment entered into the above-entitled action, and recorded in Judgment Book B of said Court, page 180, and I further certify that the foregoing papers hereto annexed constitute the

judgment roll in said action. And I still further certify that no satisfaction or partial satisfaction has ever been entered upon the records relating to the judgment herein incorporated.

*In Witness Whereof*, I have hereunto set my hand and affixed my official seal this 20th day of February, 1915.

J. L. KIRTLEY, JR.,

(Seal.)

*Clerk.*

Endorsed:     Filed March 9, 1915.

A. L. Richardson, Clerk.

PLAINTIFF'S EXHIBIT NO. 22.

*In the District Court of the Sixth Judicial District  
of the State of Idaho, in and for  
the County of Lemhi.*

FIRST NATIONAL BANK OF SALMON, a Corporation, by Frank R. McCormick, Receiver,  
*Plaintiff,*

VS.

HARRY BROWN, *Defendant.*

EXECUTION.

*To the Sheriff of Lemhi County, Greeting:*

*Whereas*, on the 28th day of September, A. D. 1914, a judgment was rendered in the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Lemhi, in favor of the First National Bank of Salmon, by Frank R. McCormick, Receiver, plaintiff, and against Harry Brown, defendant, for the sum of Eighteen Thousand Four Hundred and Ninety-eight and 39-100 Dollars, with interest thereon at the rate of seven per cent per

annum from the 28th day of September, A. D. 1914, and the judgment roll filed in said case in said County and judgment docketed in the Clerk's office of said Court on the 14th day of December, 1914, and the sum of Eighteen Thousand Nine Hundred Eighty-two and 64-100 Dollars is now (at the date of this writ) actually due on said judgment.

Now, you, the said Sheriff, are hereby required to make the said sums due on the said judgment for damages, with interest as aforesaid, and costs and accruing costs, to satisfy the said judgment out of the personal property of said debtor; or, if sufficient personal property of said debtor cannot be found, then out of the real property in your County belonging to Harry Brown on the day whereon said judgment was docketed, in the said County, or at any time thereafter, and make return of this writ, within sixty days after your receipt thereof, with what you have done indorsed hereon.

*In Testimony Whereof*, I, J. L. Kirtley, Jr., Clerk of the said District Court, have hereunto set my hand and affixed the seal of said Court, at the Court House in the County of Lemhi, State of Idaho, this 12th day of February, A. D. 1915.

(Seal.) J. L. KIRTLEY, JR., Clerk.

By W. W. SIMMONDS, Deputy Clerk.

State of Idaho,  
County of Lemhi,—ss.

I hereby certify that I received the within execution on the 12th day of February, 1915; that, after due and diligent search and inquiry, I have been un-

able to find any property belonging to the within-named defendant not exempt from execution in this County out of which to make said judgment, and herewith return this writ not served.

Dated this 25th day of February, A. D. 1915.

THOMAS J. STROUD, Sheriff.

L. A. VOGLER, Deputy.

State of Idaho,

County of Lemhi,—ss.

I, J. L. Kirtley, Jr., Clerk of the above-entitled Court, hereby certify that the above and foregoing is a full, true and complete copy of an execution issued out of this Court, and the Sheriff's return thereon, as filed in this office on the 25th day of February, 1915.

*In Witness Whereof*, I have hereunto set my hand and affixed the seal of the Court this 4th day of March, 1915.

J. L. KIRTLEY, JR.,

*Clerk District Court.*

No. 759. Filed February 25, 1915. J. L. Kirtley, Jr., Clerk District Court. By W. W. Simmonds, Deputy.

Endorsed: Filed March 9, 1915.

A. L. Richardson, Clerk.

Frederick V. Biscoe, being first duly sworn as a witness for the plaintiff, testified as follows:

On Dec. 31, 1909, undivided profit account was charged with the Langsdorf & Company premium, \$14,500.00.

With reference to the overdrafts uncollected which I heretofore stated amounted to approximately \$3,-



900.00, I should think that it is practically all uncollectible. I have computed the balance due on the loans made to the Salmon Lumber Company. The total amount due is \$13,629.20 principal, and \$5,408.62 interest. The amount due on the Brown loans is \$11,760.25 principal, and \$5234.81 interest. The amount due on the Pollard loans is \$7800.00 principal, and \$3626.42 interest.

Mr. Budge: I desire to offer pages 107 to 194, both pages inclusive, of minute book marked Plaintiff's Exhibit No. 23, for the purpose of showing that no report was ever made to the board of directors by any loans and discount committee or by any examining committee, which should have reported, according to the terms of the by-laws, as well as for the purpose of showing the approval of the loans that were made during the period by the board of directors who attended these meetings, and their approval of the overdrafts which are shown in the statements set forth in the minutes of these various meetings, and for any other purpose for which these minutes may be competent, in support of the allegations of the bill. I don't know that there are any other respects in which it would be competent, but if there are any others.

Mr. Richards: We object to these so far as the defendant Bowerman is concerned, as there is no evidence to show that he had knowledge at any time of any of these matters offered from the exhibit.

The Court: The offer will be received, subject to this objection, and we can determine ultimately whe-

ther or not any connection has been shown so far as the defendant Bowerman is concerned.

There was then offered and received in evidence the record of the special meeting of the board of directors, as shown at page 173 of Exhibit 23, in support of the allegation of the bill that a dividend of \$2500 was declared and the sum of \$5,000 carried to the surplus account of the bank, said special meeting being held on the 9th day of July, 1910.

There was then offered and received in evidence the minutes of the directors' meeting held on the 18th day of January, 1910, shown at page 153 of Plaintiff's Exhibit 23, to show that the salary of the defendant King as President of the bank was fixed at \$200 per month; that of the defendant Andrews at \$100.00 per month, as Vice President.

Cross-examination:

The balance due on the loans to the Salmon Lumber Company has not been paid because the Salmon Lumber Company is at present in the hands of a Receiver. I don't know whether the Receiver has any funds on hand or not. That is why it hasn't been paid. I think there was an inventory of the lumber in the hands of the lumber company about the time the bank failed. I have no personal knowledge what it showed. I think possibly Mr. McCormick has a record of it in the bank. I don't know.

Q. Now, taking up the Langsdorf and Company matter, you mentioned the Mulkey loan for \$5,500.00 as an excess loan, I believe.

A. The question was asked me to read all loans taken from Langsdorf & Company over \$5000, which I did. I think the register will show when that was paid. The J. N. Moore loan of \$16,000.00 was paid on August 2, 1909. It was purchased on April 15, 1909. The loan to the Independent Order of Odd Fellows, \$16,000.00, was paid on the 28th day of June, 1909. The W. J. Wittenburg loan for \$10,000.00 was paid July 29, 1909, and was purchased on April 15, 1909. The loan of October 18, 1909, to Mulkey, \$5500.00, was paid twice, according to this record here. It was paid June 4, 1910, and December 2, 1910.

Q. Taking the loan of November 27, 1909, to McKinney, for \$15,000.00.

Mr. Budge: I think this is immaterial, if Your Honor please. We don't claim anything for any of these loans.

Mr. Richards: But you claim carelessness. They were paid within 60 and 90 days after they were made.

Mr. Budge: The fact that the loans were made and that they were excess loans shows carelessness and negligence and violation of the by-laws, and violattion of the law, and it don't make any difference if they were paid fifteen minutes after they were made. The offense was complete, and there was carelessness and mismanagement of the bank.

The Court: Your contention extends only to the proposition that the making of the excess loan, even though it was promptly collected and nothing was lost, constitutes negligence?

Mr. Budge: Yes.

The Court: And you don't claim anything further?

Mr. Budge: Don't claim anything further so far as losses are concerned from those loans.

The Court: Upon that statement, the objection is sustained.

Q. Calling your attention to the Mulkey loan of October 18, 1909, for \$5500.00, was that an excess loan at that time?

Mr. Budge: That is a mere conclusion.

The Court: Overruled.

Mr. Richards: He read it as an excess loan.

A. I am not in a position to say what an excess loan is.

The Court: If that is the situation, this evidence will be considered only on the promise of showing that it was an excess loan. Of course if you don't ultimately show that it was an excess loan, it will be stricken out.

Mr. Richards: Well, there are quite a lot of them in the same shape.

The Court: Well, all of them. In other words, it will be understood that up to the present time there is no evidence that any of these loans were excess loans.

Mr. Budge: I don't understand the statement, Your Honor, in view of the proof, and to satisfy myself I want to know the position of the Court, and therefore make the inquiry. It is conceded by the pleadings that the capital stock was \$50,000.00. We

have introduced proof here, for instance, of a loan of \$14,000.00, and obviously it is excessive. It can't help but be excessive, because the law says no loan to one person shall exceed \$5000.00.

The Court: Does it say so?

Mr. Budge: Yes, the statute fixes 10 per cent of the capital stock.

The Court: Where is the statute?

Mr. Richards: And it says a surplus—

Mr. Budge: It says nothing about surplus. Even if it did say that, it is still excessive. As shown by the books of the company that have been introduced here, and the minutes, and the financial statement of the bank, it is still excessive, taking into consideration the surplus.

The Court: Then, Mr. Budge, in order that you may understand me, and I you, you were objecting to the witness answering this question. Now we must either assume that you have made proof or that you haven't. If you haven't undertaken to make proof that this is an excessive loan, then I will sustain the objection. If you put this witness on the stand not only for the purpose of showing that a loan was made, but that it is an excess loan, then his testimony is subject to cross-examination.

Mr. Budge: Yes, but the records show that it is. I claim that the proof shows that these are excess loans. But the witness couldn't answer whether they were excessive, because it is shown by the record, and it isn't a matter particularly within the knowledge of the witness, because it is shown by the rec-



ords what amounts have been carried to the surplus of the bank, and what its capital is.

The Court: If that has been shown, it hasn't been brought to my attention, as to what the surplus is. I am not advised at the present time what the surplus was.

Mr. Budge: I can call to your Honor's attention the various dates in the minutes for which the offer was made, the various dates when certain amounts were placed to the surplus.

The Court: I think I will overrule the objection, and permit counsel to go into the matter. Perhaps I will get the facts that way more easily than the other.

(Last question read.)

Mr. Budge: If I might suggest, the pleading, in paragraph 2, alleges that the directors of the bank created a surplus fund on the books of said bank in the sum of \$15,000.00, at the following times: \$1,000.00 on the 7th day of January, 1908; \$4000.00 on the 5th day of January, 1909; \$5000.00 on or about the 5th day of February, 1909—all of which are admitted by the pleadings—and \$5000.00 on or about the 9th day of July, 1910, which I just now offered, which is denied by the defendant Bowerman, but by nobody else, so that this pleading, with its admission, establishes what the surplus of the bank was.

Mr. Richards: \$65,000.00.

The Court: Perhaps that is true then.

Mr. Budge: So that with the admissions fixing it

at \$65,000.00, it would show that there were excess loans, by showing the amount of these various loans that were made.

Mr. Richards: This was \$5500.00, and the excess with the capital made \$65,000.00.

The Court: Of course, if the facts are shown, that would be a matter of argument, as to when there was an excess loan and what it was.

Mr. Richards: Q. February 2, 1910, Mrs. Eckerson, \$3000.00, and the same date, as I understood you to give it, Mrs. Eckerson, \$6000.00. Is that correct, or did you mean Mr. Eckerson?

A. The record shows Mrs. The notes have been paid. It is not to my knowledge a fact, that, notwithstanding the record, one was Mr. Eckerson and the other Mrs. Eckerson.

As to the Hammond loan of April 25, 1910, for \$1000.00, and again, the same date, the same person, for \$6000.00, it is not a fact according to this ledger that those were two separate loans to separate individuals. There are ditto marks underneath and no other initial in it. I don't know anything further than what the record shows as to whether it was a separate loan. It is supposed to show the individual names. It shows the initials in that case.

Q. One is Wellington and the other is William?

A. This reads "W. Hammond," and ditto marks underneath. It is simply "W."

Cross-examination by Mr. Whitcomb:

I have lived in Salmon nearly six years. Came there in June, 1909. Am not acquainted with George

W. Barfield. I know nothing about his financial circumstances. The effort that I made to ascertain as to his financial circumstances was that I inquired for his address and couldn't get it. That is as far as I went. I think I have seen letters to him. I wouldn't swear to it. From my absolute knowledge I couldn't say as to his financial ability to pay.

I am acquainted with Fred Brough. I am acquainted with his financial status in Lemhi County. I had our attorney examine the records and found out that he had a building on Main street which was mortgaged for \$5000.00 and that that was all the personal property he had, and he is heavily in debt otherwise. I was told it wouldn't pay us to bring suit against him on account of his having so little equity in the building. I obtained this information through the attorney. I didn't look up the records personally. I have heard he was engaged more or less in mining in that county. I don't know that he owns some mines there. I did not hear about his bringing ore out of there this last year. I didn't hear of his shipping ore from the Leesburg district, so-called. I didn't know anything about that. I relied entirely on the attorney.

Mr. F. C. Hanmer is a practicing physician in Salmon. I made the same effort to find out his financial standing or ability to pay—through our attorney—and also by personal solicitation for the amount. He told me it was impossible for him to pay anything at the present time. He has, according to the attorney, nothing that we could get. I understand that

his automobile is in his brother's name. He has a shack building on the west side of the river. The only effort I made to ascertain what his interest was in the ground on which the shack is situated was, as before, through our attorney.

Mr. J. L. Hammond is not a resident of Salmon, now. He was there for some length of time. So far as I know, he is an unmarried man. I have had letters returned. I don't know him personally. I have not been able to reach him. He didn't work in the same block where I have worked, not to my knowledge.

I am acquainted with George Leabo. His financial standing, I believe, is good, but the overdraft is disputed. We have never brought suit to test the question.

I am acquainted with John Lottridge. The effort I have made to ascertain what his financial standing has been was through our attorney. I have never looked the matter up personally. No funds have come into our office belonging to John Lottridge, not to my knowledge. I was never personally indebted to John Lottridge for money or on account of property claimed by John Lottridge.

I can't say anything about Mr. McCormick. Personally, I never have been.

I am acquainted with W. W. Schultz. I believe we have nearly everything he has as security for some notes we hold of his. That overdraft is not covered by the security. I wouldn't like to say that our security is more than sufficient to cover the notes which

we hold. I think not. It is purely a question of opinion on my part.

I am acquainted with Mr. Z. T. Vincent. I think he resides in New Mexico at the present time. I am not sure about that. He is an Episcopal minister. I have written him on several occasions and received answers saying that at the present time he was unable to pay, he had nothing whatever. He never disputed the bill. The last communication received from him, I should say, was about last June.

I am acquainted with John R. Wheeler. I don't know where he resides at the present time. I have heard that at one time he resided in the city of Pittsburgh, Pennsylvania. I have heard him make the claim that he owned real property in that city. I haven't endeavored to ascertain whether this bill would be collectible against any property which he owned in that city. I don't know where he is at the present time.

I am acquainted with Joseph G. Wicklund. I have made efforts toward ascertaining his financial worth in Lemhi County through our attorney—no personal investigation.

Q. Do you hold anything, or does your bank hold anything as security for this overdraft or any indebtedness which Mr. Wicklund owes the bank?

A. We hold security for a note on which we got judgment. The amount of the note is somewhere around \$1800.00. We have had judgment on it and foreclosed the mortgage. Only part of the property



has been sold. I believe we have some stock in some lime and brick company as security for the note turned over to us by Mr. Wicklund.

My understanding with respect to the lime claim up the Lemhi River is that it was taken up, and the assessment work hasn't been done on it, so I don't know whether they hold it now. I know they did hold it some time ago. I couldn't say personally how long they held it. I don't think they hold it now. I believe Mr. McCormick has made an effort to realize on these certificates of stock of this brick and lime company. I have not myself. I don't know anything about that.

Re-direct examination :

From my investigation and inquiries I know of no property of any of these persons, either in Idaho or elsewhere, to which I could have resorted for the payment of these overdrafts.

Re-cross examination :

By Mr. Whitcomb :

To my knowledge nothing more has been paid towards the overdraft of Fred Brough. The payment of \$27.19 was made before I took charge there, and nothing has been paid since.

Witness examines Exhibit A, attached to the bill of complaint, and states that the overdraft of E. E. Minart has been paid, \$2.45. I think, Mr. Whitcomb, that is the only overdraft that I can recall from memory that has been paid.

F. J. COWEN, called as witness on behalf of the plaintiff, being first duly sworn, testified as follows :

My name is F. J. Cowen. I reside at Salmon, Idaho. I am Judge of the Sixth District Court. As an attorney, I think I represented the First National Bank of Salmon and Mr. McCormick in the case of Western Loan & Savings Company, a corporation, against Saphronia A. Pollard, Frank M. Pollard and the First National Bank of Salmon, a corporation, and Frank R. McCormick, as Receiver of the First National Bank of Salmon, in the District Court of the Sixth Judicial District of Idaho, in and for Lemhi County, and am reasonably familiar with the proceedings.

Plaintiff's Exhibit 24 was offered and received in evidence.

# PLAINTIFF'S EXHIBIT NO. 24.

*In the District Court of the Sixth Judicial District  
of the State of Idaho, in and for  
the County of Lemhi.*

WESTERN LOAN AND SAVINGS COMPANY, a  
Corporation, *Plaintiff,*

vs.

SOPHRONIA A. POLLARD, FRANK M. POLLARD, and the FIRST NATIONAL BANK OF SALMON, a Corporation, and FRANK R. McCORMICK, as Receiver of First National Bank of Salmon, *Defendants.*

# COMPLAINT IN FORECLOSURE.

The plaintiff, the Western Loan and Savings Company, a corporation, complains of the above-named defendants and for cause of action alleges:

I.

The plaintiff is a loan and savings corporation, created, organized and existing under and by virtue of the laws of the State of Utah.

II.

That before the dates hereinafter mentioned plaintiff caused to be filed in the office of the County Recorder of the County of Bannock, in the State of Idaho, a duly certified copy of its articles of incorporation, and also before said dates caused to be filed in the office of the Secretary of State of the State of Idaho, a copy of said articles duly certified by the County Recorder of said County of Bannock.

III.

That before said dates and time hereinafter mentioned plaintiff accepted the provisions of the Constitution and laws of the State of Idaho, and caused to be filed in the office of the Clerk of the District Court of said County of Bannock a designation of agent and acceptance of the provisions of said Constitution and Statutes of said State of Idaho.

IV.

That on or about the . . . . . day of March, 1911, at Salmon, in the County of Lemhi, State of Idaho, the defendants, Sophronia A. Pollard and Frank M. Pollard, made, executed and delivered to plaintiff, for value received, one certain promissory note or contract by which the said defendants promised to pay to said plaintiff the sum of Fifteen Hundred Dollars, with interest thereon at the rate of twelve

per cent per annum, principal and interest payable monthly as follows: Twenty-seven and no-100 Dollars on the 16th day of each and every month, commencing with the month of March, 1911, until eighty-one (81) payments shall have been made, payments to be applied first upon interest due, the balance upon principal. And by said promissory note defendants further promised to and with plaintiff that default in the payment of any installment shall and would mature the entire indebtedness. Defendants also, by said promissory note, promised to and with plaintiff, that if, after default, said note is placed in the hands of an attorney for collection, they would pay reasonable attorney's fee of such attorney.

## V.

That said defendants, to secure the payment of said principal sum of money, and the interest thereon at maturity, as set forth in said promissory note, and according to the tenor and effect thereof, did, at the same time and place, execute, under their hands and seals, and deliver to plaintiff a certain mortgage bearing the date aforesaid, and conditioned for the payment of said sum of Fifteen Hundred Dollars, lawful money of the United States of America, and interest thereon at the rate of twelve per cent per annum, at the time and in the manner specified in said promissory note, by which mortgage said defendants sold and conveyed unto the plaintiff that certain piece or parcel of land, situate, lying and being in the County of Lemhi, State of Idaho, more particularly described as follows, to-wit: Lot Three (3),



Block Six (6), of the Re-subdivision of Tingley's Addition to North Salmon, as shown by Book 1 of Plats, at page 19, now on file in the office of the County Recorder of Lemhi County, Idaho, upon condition that said defendants would pay plaintiff the said promissory note of Fifteen Hundred Dollars and interest thereon at the rate of twelve per cent per annum, at the time and in the manner specified and set forth in the aforesaid promissory note. Which mortgage was duly recorded, acknowledged and certified to, entitled it to be recorded, and the same was afterwards, on the 4th day of March, 1911, recorded in the office of the County Recorder of said Lemhi County, Idaho, in Book "E" of Mortgages, at page 602.

Said mortgage is in words and figures following, to-wit:

*"This Indenture*, Made the . . . . . day of . . . . . , A. D. 1910, by and between Sophronia A. Pollard and Frank M. Pollard, her husband, of Salmon, County of Lemhi and State of Idaho, the parties of the first part, and the Western Loan and Savings Company, a corporation existing under the laws of the State of Utah, party of the second part.

*"Witnesseth*, That the said parties of the first part, for and in consideration of the sum of Fifteen Hundred Dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do grant, bargain, sell, convey and confirm unto the said party of the second part, and to its



assigns and successors forever, all that certain piece or parcel of land situate, lying and being in the County of Lemhi, and State of Idaho, more particularly described as follows, to-wit: Lot Three (3), Block Six (6) of the Re-subdivision of Tingley's Addition to North Salmon, Book 1 of Plats, page 19.

"To have and to hold the same, together with all the tenements, hereditaments, privileges, appurtenances and water rights, including water rights represented by stock in companies, thereunto belonging or used therewith, and including all homestead and exemption rights therein.

"This conveyance is intended as a mortgage to secure the payment of one certain promissory note, made and executed by the said parties of the first part, in words and figures as follows, to-wit:

"\$1500.00.                      Salmon, Idaho, March 3, 1911.

"For value received, we promise to pay to the order of the Western Loan and Savings Company, a corporation, at its office in Salt Lake City, Utah, the sum of Fifteen Hundred Dollars, with interest thereon at the rate of twelve per cent per annum, principal and interest payable monthly, as follows: Twenty-seven and no-100ths Dollars on the 16th day of each and every month, commencing with the month of March, 1911, until Eighty-one (81) payments shall have been made, payments to be applied first upon interest due, the balance upon principal. Default in the payment of any installment shall mature the entire indebtedness, and if, after default, this note is placed in the hands of an attorney for col-

lection, we agree to pay the reasonable attorney's fee of such attorney.

“SOPHRONIA A. POLLARD.

“FRANK M. POLLARD.

“And the said parties of the first part hereby covenant and agree with the party of the second part, its assigns and successors, as follows:

“That the said parties of the first part are well seized of said premises in fee simple, that the same are free and clear from any and all incumbrances, and that they shall and do forever warrant the same against the lawful claims of all persons. To keep the buildings and improvements, situated or placed on said premises, insured against fire, in such company as may be approved by the party of the second part, to the amount of \$1500.00, with loss, if any, payable to the party of the second part, and deliver such policy as soon as issued to the party of the second part; to pay all taxes and assessments levied upon said premises, when same become due and payable, and file the receipts for the same with the said party of the second part; to pay the expenses of releasing this mortgage on the records when it shall have been fully paid; to pay the costs, including a reasonable attorney's fee, for enforcing the provisions of or foreclosing this mortgage; to repay immediately to the parties of the second part any and all sums paid by it for insurance or taxes, or for any other purpose to protect the security hereby given, with interest on such sums at the rate of twelve per cent per annum, and any and all such sums are here-

by included in the amount secured by this mortgage.

“In case of the failure of the parties of the first part to keep said premises insured as herein provided, or to deliver the insurance policy or any renewal or substitute policy for the same, to the party of the second part, the party of the second part shall have the right immediately upon any such failure to procure said insurance upon said premises, and any sum paid for such insurance, together with interest at twelve per cent per annum thereon, shall immediately fall due from the said first parties to the second party.

“The party of the second part shall in no event be responsible for the sufficiency in form or substance of the policy or the solvency or sufficiency of any insurance company in respect to the insurance herein provided for. Money collected by the party of the second part or any insurance policy may, at its option, be devoted to the repair or reproduction of the subject of the insurance, or applied and credited to the indebtedness hereby secured. The installments then remaining unpaid shall thereafter fall due, one each month, commencing in the month next succeeding the month of such application.

“And it is further agreed that, in case of default in the payment of said promissory note according to its terms, or in case of failure to procure or maintain the insurance as above mentioned, or pay the premiums therefor, or to pay the taxes assessed against said property; or in case of a breach of any of the

covenants or agreements herein contained, then all of said principal sum remaining unpaid shall at once mature and become payable, and the said party of the second part may at once foreclose this mortgage, and, in the manner prescribed by law, sell the said premises, with all and every the appurtenances or any part thereof, and out of the proceeds of said sale retain the amount due on said principal sum, with interest thereon at the rate of 12 per cent per annum, and retain also the costs and charges of making such foreclosure and sale, and a reasonable sum for attorney's fees, together with any and all sums paid by it for insurance or taxes, or for any other purpose to protect the security hereby given, with interest thereon, and the overplus, if any there be, shall be paid to said parties of the first part, their heirs and assigns.

*"In Witness Whereof,* The said parties of the first part have hereunto set their hands and seals the day and year first above written.

"SOPHRONIA A. POLLARD.

"FRANK M. POLLARD.

"Signed, sealed and delivered in the presence of P. J. Dempsey."

UNITED STATES OF AMERICA.

State of Idaho,

County of Lemhi,—ss.

On this 3rd day of March, in the year 1911, before me, P. J. Dempsey, a notary public, personally appeared Sophronia A. Pollard and Frank M. Pollard, her husband, known to me to be the persons whose



names are subscribed to the within instrument, and acknowledged to me that they executed the same.

(Seal.)             P. J. DEMPSEY, Notary Public.

VI.

That the plaintiff is now the lawful owner of said promissory note and mortgage.

VII.

That the defendants, Sophronia A. Pollard and Frank M. Pollard, have not paid said promissory note, nor any part thereof.

VIII.

That it was provided in said note and mortgage, as herein above stated, that in case default be made in the payments of any installment of said note and mortgage, the entire indebtedness created by the loan of said money and the note and mortgage would at once mature and become payable, although the time expressed in said note for each payment shall not have arrived, and the said party of the second part might at once foreclose this mortgage in the manner prescribed by law, sell the said premises with all and every appurtenances or any part thereof, and out of the proceeds of said sale retain the amount due on said principal sum, with interest thereon at the rate of 12 per cent per annum, and retain also the costs and charges of making such foreclosure and sale, and a reasonable sum for attorney's fees, together with any and all sums paid by it for insurance or taxes, or for any other purpose to protect the security hereby given, with interest thereon, and the



overplus, if any thereby, shall be paid to said parties of the first part, their heirs and assigns.

### IX.

That under the terms of the aforesaid note and mortgage installments of Twenty-seven and no-100 Dollars each became due and payable on the 16th day of May, June, July, August, September, October, November and December, 1911, and the 16th day of January, February and March, 1912, which said installments or payments have not been made and are still due and unpaid, and the plaintiff elects to deem and consider the whole principal sum and interest of said note and mortgage to be immediately due and payable.

### X.

That in and by the covenants and provisions of said mortgage the defendants, Sophronia A. Pollard and Frank M. Pollard, were required and they therein and thereby agreed with plaintiff, to pay all taxes and assessments levied upon said premises when the same became due and payable, and file receipts for the same with said plaintiff. That there was assessed and levied against said premises taxes for the year 1911, amounting to the sum of Fifty-five and 55-100 Dollars, which were due and payable December first of said last year named. That said defendants have not paid said amount of taxes, or any part thereof, and have not filed receipts for the same with the plaintiff. That because of said arrearage of taxes and by virtue of the right given to plaintiff by said mortgage, plaintiff paid said taxes to the proper of-

ficers of the County of Lemhi, to-wit, the sum of \$55.55, and now claim that the addition of that amount to the aforesaid mortgage debt, with interest at twelve per cent.

XI.

That, by virtue of the premises, there is now justly due to plaintiff on said note and mortgage the principal sum of fifteen hundred dollars, together with interest on said loan according to the terms of said note and mortgage to the amount of One Hundred Sixty-five (\$165.00) Dollars, making a total of principal and interest due to date of One Thousand Six Hundred Sixty-five (\$1665) Dollars.

XII.

That the sum of One Hundred Fifty Dollars is a reasonable counsel fee to be allowed to plaintiff in this action, and the plaintiff hereby asks for the allowance thereof by this Court.

XIII.

That all the covenants and conditions in said mortgage contained to be kept and performed by said defendants, Sophronia A. Pollard and Frank M. Pollard, have been broken.

XIV.

That the defendant, Frank M. Pollard, is the husband of the defendant, Sophronia A. Pollard, and has no interest in said mortgage and debt than as such husband.

XV.

That the defendant, the First National Bank of Salmon, a corporation, and Frank R. McCormick, as Receiver of First National Bank of Salmon, have, or claims to have, some interest or claim upon said above-described property, or some part thereof, as purchasers, mortgagees or otherwise, which interest or claim is subsequent to and subject to the lien of the plaintiff's mortgage.

*Wherefore*, Plaintiff prays judgment against the defendants:

1. For the sum of fifteen hundred dollars, with interest thereon from the 16th day of May, 1911, at the rate of twelve per cent per annum, and the sum of \$55.55 as and for the taxes on the above-described property, paid by plaintiff with interest thereon at the rate of twelve per cent per annum from and after the first day of January, 1912, and the sum of one hundred and fifty dollars as and for attorney's fees, and for the costs of this suit.

2. That the usual decree be made for the sale of said premises by the sheriff of the County of Lemhi, according to law and the practice of this Court; that the proceeds of said sale may be applied in payment of the amount due the plaintiff and that said defendants and all persons claiming under them subsequent to the execution of said mortgage upon said premises, either as purchasers, incumbrancers or otherwise, may be barred and foreclosed of all right, claim or equity of redemption in said premises and every part thereof, and that said plaintiff may have judg-

ment and execution against the said defendant, Sophronia A. Pollard, for any deficiency which may remain after applying all the proceeds of the sale of said premises, properly applicable to the satisfaction of said judgment.

3. That the plaintiff, or any other party to the suit, may become a purchaser at said sale; that the sheriff execute a deed to the purchaser; that the purchaser be let into the possession of the premises on production of the sheriff's deed therefor; and that the plaintiff have such other and further relief in the premises as to this Court may seem meet and equitable.

JOHN H. PADGHAM,  
GEO. W. PADGHAM,  
*Attorneys for Plaintiff,*  
Residence: Salmon, Idaho.

State of Idaho,  
County of Lemhi,—ss.

Geo. W. Padgham, of said County, being first duly sworn, deposes and says:

1. I am one of the attorneys for the plaintiff in this action.

2. I have read the foregoing complaint and know the contents thereof, and that the same is true of my own knowledge, except as to matters therein stated on information and belief, and as to those matters I believe it to be true.

3. The reason this verification is not made by an officer of the plaintiff, is that there is now no officer

of said corporation within the County of Lemhi, which is the County wherein I reside.

GEO. W. PADGHAM.

Subscribed and sworn to before me this 20th day of March, 1912.

J. L. KIRTLEY, JR.,

(Seal.)

*Clerk of the District Court.*

By W. W. SIMMONDS, Deputy.

No. 641: Filed March 20, 1912. J. L. Kirtley, Jr., Clerk. By W. W. Simmonds, Deputy.

*In the District Court of the Sixth Judicial District  
of the State of Idaho, in and for  
the County of Lemhi.*

WESTERN LOAN AND SAVINGS COMPANY, a Corporation, *Plaintiff,*

vs.

SOPHRONIA A. POLLARD, FRANK M. POLLARD, and FIRST NATIONAL BANK OF SALMON, a Corporation, and FRANK R. McCORMICK, as Receiver of First National Bank of Salmon, *Defendants.*

ANSWER.

Comes now the defendant, the First National Bank of Salmon, a corporation, and Frank R. McCormick, Receiver of the First National Bank of Salmon, and answers the complaint of the plaintiff on file herein, and for cause of answer admits, denies and alleges as follows:

I.

Answering paragraph seven of the plaintiff's complaint, this defendant denies that the defendants,



Sophronia A. Pollard and Frank M. Pollard, have not paid the promissory note alleged in the complaint, nor any part thereof, but, on the contrary, allege that they have paid and advanced to the plaintiff the sum of Two Hundred Eighty-seven Dollars and Fifty Cents which should be applied and credited on said note by the plaintiff.

Further answering the complaint, the defendant, the First National Bank of Salmon, and Frank R. McCormick, as Receiver of First National Bank of Salmon, alleges that it is informed and believes and therefore says:

#### I.

That the defendants, Sophronia A. Pollard and Frank M. Pollard, executed the note and mortgage alleged in plaintiff's complaint, and delivered the same to the plaintiff upon the express understanding, agreement and condition that if the said note and mortgage were accepted by the plaintiff the said plaintiff would, thereupon, loan and advance to the said Sophronia A. Pollard and Frank M. Pollard the sum of Fifteen Hundred Dollars.

#### II.

That the said plaintiff, upon receiving the said note and mortgage, accepted the same, but failed and refused to loan or advance to the said Sophronia A. Pollard and Frank M. Pollard the full sum of Fifteen Hundred Dollars, and that by reason thereof the said note and mortgage were given without consideration therefor.

And for further defense to the complaint of the plaintiff herein and by way of cross-complaint against the plaintiff and the defendants, Sophronia A. Pollard and Frank M. Pollard, and defendant alleges:

### I.

That the defendant, the First National Bank of Salmon, is a national banking corporation, organized and existing under the laws of the United States, and as such has been at all times herein mentioned, doing a general banking business at Salmon, in the County of Lemhi, State of Idaho, until on or about the 8th day of June, 1911, when the said bank suspended payment, and that afterwards, on or about the 8th day of August, 1911, the Honorable Comptroller of the Currency of the United States determined the said bank to be in an insolvent condition and appointed a Receiver therefor; and that the defendant, Frank R. McCormick, is now the duly qualified and acting Receiver of said corporation.

### II.

That on or about the 11th day of July, 1910, the defendants, Sophronia A. Pollard and Frank M. Pollard, executed and delivered to this defendant their certain promissory note, wherein they promised and agreed to pay to the said First National Bank of Salmon, or order, the sum of Seventeen Hundred Dollars on demand, after date, with interest thereon at the rate of ten per cent per annum; and that on or about the 29th day of June, 1910, the defendants, Sophronia A. Pollard and Frank M. Pollard, executed

and delivered to this defendant another certain promissory note, wherein they promised and agreed to pay to the said First National Bank of Salmon the sum of Six Thousand Two Hundred and Fifty Dollars four months after date, with interest thereon at the rate of ten per cent per annum.

### III.

That the defendants, Frank M. Pollard and Mrs. Sophronia A. Pollard, his wife, to secure the payment of the said promissory notes, on or about the first day of July, 1911, executed and delivered to the said First National Bank a certain mortgage wherein they sold and conveyed to this defendant certain real estate described therein, which mortgage was duly acknowledged and certified so as to entitle it to be of record, and the same was, on the 6th day of July, 1911, duly recorded in the office of the County Recorder of the said County of Lemhi, Idaho, in Book "G" of Mortgages, at page 81, a copy of which said mortgage, marked Exhibit "A," is attached to this complaint and is hereby made a part thereof.

### IV.

That this defendant and cross-complainant is now the lawful owner and holder of the said promissory notes and mortgage.

### V.

That the defendants, Frank M. Pollard and Sophronia A. Pollard, have not paid the said promissory notes, nor any part of either of them, and the same are now due.

VI.

That the sum of Seven Hundred and Fifty Dollars is a reasonable counsel fee to be allowed to this cross-complainant as an attorney fee for the foreclosure of said mortgage.

*Wherefore*, this defendant prays the judgment and decree of this Court.

I.

That the complaint of the plaintiff herein be dismissed and that plaintiff take nothing thereby.

II.

That the defendant, the First National Bank, by Frank R. McCormick, Receiver therefor, have and recover judgment against the co-defendants, Frank M. Pollard and Sophronia A. Pollard, his wife, for the sum of Seventeen Hundred Dollars, with interest thereon from the 11th day of July, 1910, and for the further sum of Six Thousand Two Hundred and Fifty Dollars, with interest thereon from the 29th day of June, 1910, both at the rate of ten per cent per annum, and for costs of suit, including Seven Hundred and Fifty Dollars as attorney fees.

III.

That the usual decree be made for the sale of the premises described in the mortgage so given by the defendants, Frank M. Pollard and Sophronia A. Pollard, to the said First National Bank of Salmon; that the proceeds of said sale may be applied in payment of the amount so due to the First National Bank, and that the defendants, Frank M. Pollard and Sophronia



A. Pollard, and all persons claiming under them, subsequent to the execution of said mortgage, may be barred and foreclosed of all right, claim or equity of redemption in said premises and every part thereof, and that the said First National Bank may have judgment and execution against the said defendants, Frank M. Pollard and Sophronia A. Pollard, for any deficiency which may remain after applying all the proceeds of the sale of said premises, properly applicable to the satisfaction of the said judgment.

## IV.

That the said First National Bank, by Frank R. McCormick, Receiver therefor, or any other party to the suit may become a purchaser at said sale; that the Sheriff execute a deed to the purchaser; that the purchaser be let into the possession upon production of said deed, and that this cross-complainant have such other relief of the said premises as to this Court may seem just and equitable.

F. J. COWEN,

Residence: Salmon, Idaho,

*Attorney for First National Bank.*

State of Idaho,  
County of Lemhi,—ss.

Frank R. McCormick, being first duly sworn, deposes and says: That he is one of the defendants named in the said action; that he has read the foregoing answer and cross-complaint of the defendant, the First National Bank, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated to be



on information or belief and as to those matters he believes the same to be true.

FRANK R. McCORMICK.

Subscribed and sworn to before me this 3rd day of April, 1912.

(Seal.)

J. P. NIXON, JR.,

*Notary Public in and for Lemhi County, Idaho.*

My commission expires May 6, 1914.

Service of the foregoing answer and cross-complaint is hereby admitted by receipt of a copy thereof this 3rd day of May, 1912.

GEO. W. PADGHAM,

JOHN H. PADGHAM,

*Attorneys for Plaintiff.*

E. W. WHITCOMB,

*Attorney for Defendants,*

*Frank M. and S. A. Pollard.*

*This Indenture*, Made the 27th day of June, in the year of our Lord one thousand nine hundred and eleven, between Francis M. Pollard and Sophronia A. Pollard, his wife, and Sophronia A. Pollard, in her own right of property, of the County of Lemhi, State of Idaho, the parties of the first part, and the First National Bank of Salmon, County of Lemhi, State of Idaho, the party of the second part;

*Witnesseth*: That the said parties of the first part, for and in consideration of the sum of Seven Thousand Nine Hundred and Fifty (\$7,950.00) Dollars, lawful money of the United States of America, to them in hand paid by the said party of the second

part, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed and by these presents do grant, bargain, sell and convey unto the said party of the second part and to its successors and assigns forever, all those certain lost pieces or parcels of land, situated, lying and being in the County of Lemhi, and State of Idaho, and particularly described as follows, to-wit:

All of lot number Three (3) and all of lot number Four (4) of and in Block number Six (6) of and in re-subdivision of Tingley's Addition to North Salmon, as the aforesaid lot appears upon that certain plat now on file and of record in the office of the County Recorder of Lemhi County, Idaho, in Book One of Plats, at page 19, Official Records of said Lemhi County.

Together with all buildings, ditches and water rights and all improvements erected or situated thereon, belonging or appertaining thereto or used in connection therewith, together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining.

This grant is intended as a mortgage to secure the payment of two certain promissory notes executed and delivered by the said parties of the first part to the said party of the second part, which notes are in words and figures following, to-wit:

No. 2459.

Salmon, Idaho, July 11th, 1910.

On demand, after date, for value received, and without grace, I, we or either of us, promise to pay to the order of the First National Bank of Salmon,

Seventeen Hundred (\$1700.00) Dollars, in lawful money of the United States of America, at the First National Bank, Salmon, Idaho, with interest thereon in like money, from date until paid, at the rate of ten per cent per annum, interest to be paid. . . . . and if not so paid, the whole sum of both principal and interest to become immediately due and collectible.

And in case suit is instituted, to collect this note or any portion thereof, we promise to pay, besides costs and disbursements, as attorney's fees in said suit or action.

(Signed:) MRS. S. A. POLLARD.

(Signed:) F. M. POLLARD.

Due. . . . . 190. . .

P. O. . . . .

No. . . . . Salmon, Idaho, June 29, 1910.

Four months after date, for value received, and without grace, I, we or either of us, promise to pay to the order of the First National Bank of Salmon, Six Thousand Two Hundred Fifty (\$6,250.00) Dollars, in lawful money of the United States of America, at the First National Bank, Salmon, Idaho, with interest in like money, from date until paid, at the rate of ten per cent per annum, interest to be paid. . . . . and if not so paid, the whole sum of both principal and interest to become immediately due and collectible.

And in case suit is instituted to collect this note, or any portion thereof, we promise to pay, besides

costs and disbursements allowed by law, such additional sum as the Court may adjudge reasonable as attorney's fees in said suit or action.

(Signed:) MRS. S. A. POLLARD.

(Signed:) F. M. POLLARD.

Due.....190...

P. O. ....

All these presents shall be void if such payments be made, but in case default shall be made in the payment of the said principal sum of money, or any part thereof, as provided in said notes, or if the interest be not paid as herein specified, then and from thenceforth it shall be optional with the said party of the second part, its successors or assigns, to consider the whole of said principal sum expressed in said notes as immediately due and payable, although the time expressed in said notes for the payment thereof shall not have arrived, and immediately to enter into and upon all and singular the above-described premises, and to sell and dispose of the same and all benefit and equity and redemption of the said parties of the first part, their heirs, executors, administrators or assigns, according to law, and out of the money arising from such sale to retain the principal and interest which shall then be due on the said promissory notes, together with the costs and charges of foreclosure suit, including reasonable counsel fees, and also the amounts of all such payments, of taxes, assessments, incumbrances or insurance as may have been made by said party of the second part, its heirs, executors, administrators or assigns, by reason of

the permission hereinafter given, with the interest on the same hereinafter allowed, rendering the overplus of the purchase money (if any there shall be) unto the said parties of the first part, their heirs, executors, administrators, or assigns. And the said parties of the first part do hereby further covenant, promise and agree to and with the said party of the second part, to pay and discharge, at maturity, all such taxes or assessments, liens or other incumbrances now subsisting or hereafter to be laid or imposed upon said premises, or which may be in effect a prior charge thereupon to these presents, during the continuance thereof, and in default thereof the said party of the second part may pay and discharge the same, and may, at his option, keep fully insured against all risks by fire the buildings which are now or may be hereafter erected thereon, at the expense of the said parties of the first part, and the same so paid shall bear interest at the rate of ten per cent per annum until paid, and shall be considered as secured by these presents and be a lien upon said premises, and shall be deducted from the proceeds of the sale thereof, above mentioned, with interest as provided.

*In Witness Whereof*, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

(Seal.) FRANCIS M. POLLARD.

(Seal.) SOPHRONIA A. POLLARD.

Signed, sealed and delivered in the presence of  
John C. Sinclair.



State of Idaho,  
County of Lemhi,—ss.

On this first day of July, 1911, before me, John C. Sinclair, a Notary Public in and for said County, personally appeared Francis M. Pollard and Sophronia A. Pollard, his wife, known to me to be the persons whose names are signed to the within instrument, and acknowledged to me that they executed the same.

*In Witness Whereof*, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

JOHN C. SINCLAIR,  
*Notary Public in and for Lemhi County, Idaho.*

State of Idaho,  
County of Lemhi,—ss.

I hereby certify that this instrument was filed for record at request of the First National Bank, in liquidation, 5 minutes past 10 o'clock A. M., this 6th day of July, A. D. 1911, in my office, and duly recorded in Book "G" of Mortgages, at page 81.

J. L. KIRTLEY, JR.,  
*Ex-officio Recorder.*

By W. W. SIMMONDS, Deputy.

Filed: No. 641. May 4, 1912. J. L. Kirtley, Jr.,  
Clerk. By W. W. Simmonds, Deputy.

*In the District Court of the Sixth Judicial District  
of the State of Idaho, in and for  
the County of Lemhi.*

WESTERN LOAN & SAVINGS COMPANY, a  
Corporation, *Plaintiff,*

vs.

SOPHRONIA A. POLLARD, FRANK M. POLLARD, the FIRST NATIONAL BANK OF SALMON, a Corporation, and FRANK R. McCORMICK, as Receiver of the First National Bank of Salmon, *Defendants.*

ANSWER.

Come now the defendants, Sophronia A. Pollard and Frank M. Pollard, and answer the complaint of the plaintiff on file herein, and for cause of answer admit, deny and allege as follows:

I.

Answering paragraph seven of the plaintiff's complaint, the defendants deny that they have not paid the said promissory note, or any part thereof, but on the contrary, allege that they have paid and advanced to the plaintiff the sum of \$. . . . ., which should be applied and credited on said note by plaintiff.

II.

That the said defendants, Sophronia A. Pollard and Frank M. Pollard, executed the note and mortgage alleged in plaintiff's complaint and delivered the same to the plaintiff upon the express understanding, agreement and condition that if the said note and mortgage were accepted by the plaintiff,

the plaintiff would thereupon loan and advance to the said defendants the sum of Fifteen Hundred (\$1500.00) Dollars.

III.

That the said plaintiff, upon receiving the said note and mortgage, accepted the same, but failed and refused to loan or advance to the said defendants the said sum of Fifteen Hundred (\$1500.00) Dollars, or any part thereof, and that by reason thereof the said note and mortgage were given without due consideration therefor.

*Wherefore*, The plaintiff prays the judgment and decree of this Court.

I.

That the complaint of the plaintiff herein be dismissed, and the plaintiff take nothing thereby.

II.

That the said defendants, Sophronia A. Pollard and Frank M. Pollard, be given such other and further relief as to this Court may seem just and equitable.

E. W. WHITCOMB,

*Attorney for Defendants, Sophronia A. Pollard  
and Frank M. Pollard,*

Residence: Salmon, Idaho.

State of Idaho,

County of Lemhi,—ss.

Frank M. Pollard, being duly sworn, deposes and says that he is one of the defendants in the above-entitled action; that he has read the foregoing ans-

wer and knows the contents thereof, and that the same is true of his own knowledge.

FRANK M. POLLARD.

Subscribed and sworn to before me this 30th day of April, A. D. 1912.

(Seal.)

ENOCH W. WHITCOMB,

*Notary Public.*

Service of the above is acknowledged by receipt of a copy of the same this 6th day of May, 1912.

GEO. W. PADGHAM,

F. J. COWEN,

*Attorneys for McCormick and Bank.*

Filed July 3, 1912. J. L. Kirtley, Jr., Clerk. By W. W. Simmonds, Deputy.

*In the District Court of the Sixth Judicial District  
of the State of Idaho, in and for  
the County of Lemhi.*

WESTERN LOAN AND SAVINGS COMPANY, a  
Corporation, *Plaintiff,*

vs.

SOPHRONIA A. POLLARD, FRANK M. POLLARD, and the FIRST NATIONAL BANK OF SALMON, a Corporation, and FRANK R. McCORMICK, as Receiver of First National Bank of Salmon, *Defendants.*

ANSWER TO DEFENDANT'S CROSS-COMPLAINT.

Comes now the plaintiff, the Western Loan and Savings Company, a corporation, and answers the cross-complaint of defendants, the First National

Bank of Salmon, a corporation, and Frank R. McCormick as Receiver of First National Bank of Salmon, on file herein, and for answer admits, denies and alleges as follows:

### I.

Admits that the defendants, Sophronia A. Pollard and Frank M. Pollard, did, on or about the 11th day of July, 1910, execute their certain promissory note wherein they promised and agreed to pay to the said First National Bank of Salmon, or order, the sum of Seventeen Hundred Dollars, on demand after date, and that on or about the 29th day of June, 1910, Sophronia A. Pollard and Frank M. Pollard, defendants, executed and delivered to the said bank another certain promissory note wherein they promised and agreed to pay to said First National Bank of Salmon the sum of Six Thousand Two Hundred and Fifty Dollars four months after date, with interest on both notes at the rate of ten per cent per annum.

### II.

That the defendants, Sophronia A. Pollard and Frank M. Pollard, to secure the payment of said promissory notes, on or about the first day of July, 1911, executed and delivered to said First National Bank a certain mortgage wherein they sold and conveyed to this defendant bank certain real estate described therein and as set forth in answer of defendant, cross-complainant, all of which was duly acknowledged and certified and recorded as set forth in said answer.



## III.

Denies that said claim of the defendant and cross-complainant is superior and should take precedence to the claim of plaintiff as in the complaint set forth in this action; but, on the contrary, alleges that said claim and right of defendant and cross-complainant, the First National Bank of Salmon, and Frank R. McCormick, as Receiver of First National Bank of Salmon, is inferior in right and subsequent in time to all claims of the plaintiff as set forth in its complaint herein.

*Wherefore*, Plaintiff prays the judgment and decree of this court:

## I.

That the mortgage and notes as set forth in plaintiff's complaint be foreclosed and that the claims as therein set forth be fully allowed; that the mortgage and notes of defendants and cross-complainants, the First National Bank of Salmon and Frank R. McCormick as Receiver of First National Bank of Salmon, be declared inferior in right and subsequent in time to all claims of the plaintiff as set forth in its complaint herein; and that plaintiff be granted such other and further relief in the premises as this Court may seem just and equitable.

JOHN H. PADGHAM,  
GEO. W. PADGHAM,  
*Attorneys for Plaintiff*,  
Residence: Salmon, Idaho.

State of Idaho,  
County of Lemhi,—ss.

P. W. MADSEN, being first duly sworn according to law, deposes and says as follows:

1. I am the President of the plaintiff corporation in this action.

2. I have read the foregoing answer and know the contents thereof, and that it is true to my own knowledge, except as to those matters therein stated, on information and belief and as to those matters I believe it to be true.

P. W. MADSEN.

Subscribed and sworn to before me this 20th day of June, 1912.

J. L. KIRTLEY, JR.,

(Seal.)

*Clerk of the District Court.*

*In the District Court of the Sixth Judicial District  
of the State of Idaho, in and for  
the County of Lemhi.*

WESTERN LOAN AND SAVINGS COMPANY, a  
Corporation, *Plaintiff,*

vs.

SOPHRONIA A. POLLARD, FRANK M. POLLARD, and the FIRST NATIONAL BANK OF SALMON, a Corporation, and FRANK R. McCORMICK, as Receiver of First National Bank of Salmon, *Defendants.*

DEMURRER.

Come now the defendants, the First National Bank of Salmon, a corporation, and Frank R. McCormick, as Receiver of the First National Bank of

Salmon, and demur to the complaint of the plaintiff, on file in the above-entitled action, and for cause of demurrer allege:

That the said complaint does not state facts sufficient to constitute a cause of action.

Wherefore, These defendants pray to be hence dismissed with their costs herein incurred.

F. J. COWEN,

Residence: Salmon, Idaho.

*Attorney for First National Bank of Salmon  
and Frank R. McCormick as Receiver.*

Service of the foregoing demurrer is hereby admitted by a receipt of a copy thereof this 1st day of April, 1912.

GEO. W. PADGHAM.

Filed April 3, 1912. J. L. Kirtley, Jr., Clerk.

*In the District Court of the Sixth Judicial District  
of Idaho, in and for the County of Lemhi.*

WESTERN LOAN AND SAVINGS COMPANY, a  
Corporation, *Plaintiff,*

vs.

SOPHRONIA A. POLLARD, FRANK M. POLLARD, the FIRST NATIONAL BANK OF SALMON, a Corporation, and FRANK R. McCORMICK, as Receiver of First National Bank of Salmon, *Defendants.*

DEMURRER.

The defendants, Sophronia A. Pollard and Frank M. Pollard demur to the plaintiff's complaint herein, and for cause of demurrer allege that said complaint

does not state facts sufficient to constitute a cause of action.

*Wherefore*, Defendants pray that plaintiff's complaint may be dismissed, and that defendants be allowed their costs.

E. W. WHITCOMB,  
*Attorney for Sophronia A. Pollard and Frank  
M. Pollard.*

Received a copy of the above this eleventh day of April, A. D. 1912.

JOHN H. PADGHAM,  
GEO. W. PADGHAM,  
*Attorneys for Plaintiff.*

Filed April 11, 1912. J. L. Kirtley, Jr., Clerk.  
By W. W. Simmonds, Deputy.

*In the District Court of the Sixth Judicial District  
of the State of Idaho, in and for  
the County of Lemhi.*

WESTERN LOAN AND SAVINGS COMPANY, a  
Corporation, *Plaintiff,*

vs.

SOPHRONIA A. POLLARD, FRANK M. POLLARD, and the FIRST NATIONAL BANK OF SALMON, a Corporation, and FRANK R. McCORMICK, as Receiver of First National Bank of Salmon, *Defendants.*

### DECREE OF FORECLOSURE.

This cause coming on for trial in the April term of this Court and having been tried before the Court on the 21st day of June, 1912, John H. Padgham,

James Ingebretsen and Geo. W. Padgham, as attorneys appearing for the plaintiff, and E. W. Whitcomb, attorney of this Court, appearing for defendants, Sophronia A. Pollard and Frank M. Pollard, and F. J. Cowen, attorney for this Court, appearing for the defendants, the First National Bank of Salmon, and Frank R. McCormick, as Receiver of the First National Bank of Salmon; and, after hearing the allegations and proofs of the parties, the arguments of the counsel, and having been advised in the premises, the cause was submitted to the Court for consideration and decision; and after due deliberation thereon the Court delivers its findings and decision in writing, which is filed, and orders that judgment be entered in accordance therewith.

It appearing to the satisfaction of the Court that there is now due and owing the plaintiff, the Western Loan and Savings Company, by the defendants, Sophronia A. Pollard and Frank M. Pollard, for principal and interest upon the debt and mortgage mentioned and set forth in the complaint of said plaintiff, the sum of Sixteen Hundred Ninety-five Dollars, which sum is due and to bear interest at the rate of seven per cent per annum, from this date, besides the sum of Fifty-five and 55-100 Dollars for taxes paid by plaintiff, and the further sum of One Hundred Fifty Dollars, allowed by the Court and adjudged a reasonable sum to be allowed as attorney's fee to the plaintiff in this action, together with costs hereof taxed in the sum of Twenty-three Dollars, that a notice of pendency of action in due form



was filed in the office of the County Recorder of Lemhi County on the 14th day of November, 1912, and that all of the allegations of plaintiff's said complaint are true; now on motion of counsel for plaintiff,

*It is Adjudged and Decreed*, That all and singular the mortgaged premises mentioned in the said complaint and hereinafter described, or so much thereof as may be sufficient to raise the amount due to the plaintiff, the Western Loan and Savings Company, for the debt aforesaid and costs of this suit and expenses of sale, be sold at public auction by the sheriff of the County of Lemhi in the manner prescribed by law, and according to the course and practice of this Court, and that the said Sheriff, after the time allowed by law for redemption has expired, execute a deed to the purchaser or purchasers of the mortgaged premises on the said sale.

That the said Sheriff, out of the proceeds of said sale, retain his fees, disbursements and commissions on said sale and pay to the plaintiff out of said proceeds the sum of Nineteen Hundred Twenty-three and Fifty-five Hundredths Dollars, the amount so found due as aforesaid, including costs, together with interest thereon, at the rate of seven per cent per annum, from the date of this decree, or so much thereof as the said proceeds of sale will pay of the same.

That the said Sophronia A. Pollard and Frank M. Pollard and all persons claiming or to claim from or under them, or either of them, and all persons having liens, subsequent to said mortgage, by judgment or

decree upon the land described in said mortgage, and their or its personal representative, and all persons having any lien or claim by or under such subsequent judgment or decree, and their heirs or personal representatives, and all persons claiming to have acquired any estate or interest in said premises subsequent to the filing of said notice of the pendency of this action, with the Recorder as aforesaid, be forever barred and foreclosed of and from all equity or redemption and claim of, in and to said mortgaged premises, and every part and parcel thereof, from and after the delivery of said Sheriff's deed.

*And It is Further Adjudged and Decreed*, That the purchaser and purchasers of said mortgaged premises at such sale be let into possession thereof, and that any of the parties of this action who may be in possession of said premises, or any part thereof, and any person who since the commencement of this action has come into possession under them or either of them, deliver possession thereof to such purchaser or purchasers, on production of the Sheriff's deed for such premises.

*And It is Further Adjudged and Decreed*, That, if the moneys arising from the said sale shall be insufficient to pay the amount so found due to the plaintiff, as above stated, with interest and costs and expenses of sale as aforesaid, the Sheriff specify the amount of such deficiency and balance due to the plaintiff in his return of said sale, and that, on the coming in and filing of said return, the Clerk of this Court docket a judgment for such balance against

the defendants, Sophronia A. Pollard and Frank M. Pollard, and that the said defendants pay to the said plaintiff, the Western Loan and Savings Company, the amount of such deficiency and judgment, with interest thereon, at the rate of seven per cent per annum, from the date of said last mentioned return and judgment, and that the plaintiff, the Western Loan and Savings Company, have execution therefor.

The lands and premises directed to be sold by this decree are situate, lying and being the County of Lemhi, State of Idaho, and bounded and particularly described as follows: Lot Three (3), Block Six (6) of the Re-subdivision of Tingley's Addition to North Salmon, Book 1 of Plats, at page 19, all of record in the office of the County Recorder of said Lemhi County, Idaho. Said premises being now within the corporate limits of the City of Salmon, Lemhi County, Idaho.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

It further appearing to the satisfaction of the Court that there is now owing to the cross-complainant, the First National Bank of Salmon, by the defendants, Sophronia A. Pollard and Frank M. Pollard, for the principal and interest upon the debts and mortgage mentioned and set forth in cross-complaint of said First National Bank of Salmon the sum of \$9517.05, besides the sum of \$750.00 allowed by the Court and adjudged reasonable as attorney's

fee for the foreclosure of said mortgage, together with its costs of suit taxed in the sum of \$3.00.

And it further appearing to the Court that the said First National Bank of Salmon has a second mortgage upon the lands and premises described in the plaintiff's mortgage, and that, in addition thereto, as security for the debts so alleged to be due to the said First National Bank from the defendants, Sophronia A. Pollard and Frank M. Pollard, they executed and delivered to the said First National Bank their said mortgage wherein they mortgaged to the said First National Bank the lands and premises so before mortgaged to the plaintiff, and in addition thereto they mortgaged Lot number Four of and in Block number Six of and in the Re-subdivision of Tingley's Addition to North Salmon, as the aforesaid lot appears on that certain plat now on file and of record in the office of the County Recorder of Lemhi County, Idaho, in Book One of Plats, at page 19, of the official records of said Lemhi County; together with all buildings, ditches and water rights and all improvements erected or situated thereon, belonging or appertaining thereto, or used in connection therewith, together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining.

Now, in consideration of the premises, it is further adjudged and decreed as follows:

That the Sheriff of Lemhi County be and he is hereby required to pay to the said First National Bank of Salmon the surplus money obtained at the



sale of the said premises so mortgaged to the plaintiff, after paying to the plaintiff the amounts heretofore ordered and directed to be paid to it, or so much of the said surplus as may be necessary to satisfy the debts and costs herein found to be due to the said First National Bank of Salmon from the said defendants, Sophronia A. Pollard and Frank M. Pollard, under the terms of said second mortgage.

That the Sheriff shall proceed to sell the said Lot number Four, above described, in like manner and form as the said Lot number Three, and out of the proceeds arising from said sale, retain his fees and disbursements on said sale, and pay to the plaintiff and his attorney, of the said proceeds, the sum of \$3.00 costs of this suit, also the further sum of \$750 attorney's fees, and the sum of \$9517.05, the amount so found due, as aforesaid, together with interest thereon at the rate of seven per cent per annum from the date of this decree, or so much thereof as the said proceeds of sale will pay of the same.

It is further adjudged and decreed that, if the moneys arising from said sales shall be insufficient to pay the amount so found due to the said First National Bank as above stated, with interest and costs and expenses of sale as aforesaid, the said Sheriff shall certify the amount of such deficiency and balance due to the said First National Bank of Salmon in his return, to said sale, and that on the coming in and filing of the said return, the Clerk of this Court shall docket a judgment for such balance against the defendants, Sophronia A. Pollard and Frank M. Pol-



lard and in favor of the First National Bank of Salmon the amount of such deficiency and judgment, with interest thereon at the rate of seven per cent per annum from the date of said last mentioned return and judgment, and that the said First National Bank of Salmon have execution therefor.

That said Sheriff, after the time allowed by law for redemption has expired, execute a deed to the purchaser or purchasers of the mortgaged premises on the said sale. In all other respects the provisions herein relative to sale of said premises by the plaintiff are to control.

The plaintiff and cross-complainant are hereby authorized and given the right to bid at the sale of said premises.

Done in open Court this 21st day of June, 1912.

J. M. STEVENS, Judge.

Filed January 6, 1913. J. L. Kirtley, Jr., Clerk.  
By W. W. Simmonds, Deputy.

*In the District Court of the Sixth Judicial District  
of the State of Idaho, in and for  
the County of Lemhi.*

WESTERN LOAN AND SAVINGS COMPANY,  
*Plaintiff,*

vs.

SOPHRONIA A. POLLARD, et al., *Defendants.*

I, the undersigned, Clerk of the District Court of the Sixth Judicial District of said State, in and for said County, do hereby certify the foregoing to be a true copy of the judgment entered in the above en-

titled action, and recorded in Judgment Book B of said Court, pages 94 and 95. And I further certify that the foregoing papers hereto annexed constitute the judgment roll in said action.

*Witness* my hand and the seal of said Court this 11th day of March, A. D. 1913.

(Seal.)

J. L. KIRTLEY, JR., Clerk.

By W. W. SIMMONDS, Deputy.

Judgment Roll, Number 641. Filed March 11th, 1913. J. L. Kirtley, Jr., Clerk. By W. W. Simmonds, Deputy.

State of Idaho,

County of Lemhi,—ss.

I, the undersigned, Clerk of the District Court of the Sixth Judicial District of the said State, in and for said County, do hereby certify that the foregoing is a true copy of the judgment entered into the above entitled action, and recorded in Judgment Book B of said Court, pages 94 and 95. And I further certify that the foregoing papers hereto annexed constitute the judgment roll in said action. And I still further certify that on the coming in of the Sheriff's return on an order of sale in the above entitled action, to-wit, on the 8th day of March, 1913, that a deficiency judgment was docketed in favor of the First National Bank, the cross-complainant herein, and against the defendants, Sophronia A. Pollard and Frank M. Pollard, in the sum of Ten Thousand Six Hundred Thirty-one and 71-100 (\$10,631.71) Dollars, and that no satisfaction or partial satisfaction has ever been entered.

*In Witness Whereof*, I have hereunto set my hand and affixed my official seal this 20th day of February, 1915.

J. L. KIRTLEY, JR.,  
(Seal.) *Clerk of the District Court.*

Endorsed: Filed March 9, 1915.

A. L. Richardson, Clerk.

Mr. Richards: Is this just the complaint?

Mr. Budge: No—it is the judgment roll.

Mr. Richards: As I take it, you are offering this to show that suit was brought against the Pollards, and the failure to collect?

Mr. Budge: Yes.

Mr. Richards: But you allege here a loan in March, 1911.

Mr. Budge: You are reading, I think, from the complaint of the Western Loan & Savings Company. There is a cross-complaint of the bank. They brought the suit, and the bank came in by way of cross-complaint.

Q. Do you recall, Mr. Cowen, the sale which took place under the decree of foreclosure in this case?

A. I do. I couldn't give the date of it from memory, Mr. Budge, only approximately, but I recall the sale. I know the amount that was realized above the claim of the Western Loan & Savings Company at this sale which was applied upon the indebtedness of the bank. The amount was \$150.00. That was the total amount. In a great many matters since the bringing of said action, and since the sale took place, I have, prior to my election as judge, represented the

Receiver, Mr. McCormick. I am familiar with the Salmon Lumber Company. I am trustee of said company's property. The papers concerning my appointment as trustee are dated March 25, 1912, about nine or ten months after the closing of the bank. (Said papers were marked Plaintiff's Exhibits 25 and 26.) I will explain, the papers are identical in form, I think, but signed by different parties. (Said exhibits were offered and received in evidence.)

PLAINTIFF'S EXHIBIT NO. 25.

*Know All Men by These Presents:* That the Salmon Lumber Company, Limited, a corporation organized and existing under the laws of the State of Idaho, acting by and through the undersigned, D. C. Slaughter, C. K. Slaughter, Ada Slaughter, A. K. Carl and J. N. C. Lottridge, holders and owners of all the issued capital stock of the said corporation, and constituting the entire Board of Directors of the said corporation, does hereby make, constitute and appoint F. J. Cowen, of Salmon City, County of Lemhi, State of Idaho, its true and lawful agent, attorney-in-fact and trustee, irrevocable, for it and in its name, place and stead, to manage and conduct all the business of the said corporation; to sell, assign, transfer, set over and otherwise dispose of all of the lumber, material, goods, wares and merchandise and other personal property belonging to the said corporation, either in bulk or otherwise, and for such price and upon such terms and conditions as the said attorney may deem best; to ask, demand, sue for, collect and receive, either in the name of the

said corporation, or in his own name, all such sums of money, debts, rents, dues, accounts and other demands, whatsoever, which are or shall be due, payable or belonging to or detained from said corporation, in any manner, whatsoever, and to compound, compromise or settle any such debts, claims or demands for such sums and in such manner as the said attorney may deem just; hereby authorizing and empowering its said attorney or agent to do and perform any act or thing necessary or expedient to be done in or about the premises to carry out the terms and conditions of this authority and trust hereinafter directed.

But this power and authority are granted upon the express condition, and the said attorney and agent is hereby authorized and directed to close up the business of the said corporation and dispose of its said property at the earliest practicable moment, considering the best interest of the said company and its creditors; and he is further directed and authorized to apply the proceeds derived from the disposal of its said property, after paying the necessary costs and expenses incidental thereto, to the payment of the bills, notes, accounts and other obligations of the said corporation in equal and proportionate shares until the whole thereof shall be satisfied and discharged, rendering any overplus to the undersigned in ratio of their ownership of the shares of the said company.

And for the purpose of carrying out the terms of this power and trust, the undersigned do hereby,



each for himself and herself, sell, assign, transfer and set over to the said F. J. Cowen, all of the shares and certificates of the stock of the said corporation, owned by himself or herself, and standing on the books of the said corporation, in their names or otherwise, to the end that the said F. J. Cowen may sell or dispose of the same, or may transfer the said stock for the purpose of perpetuating said corporation or dissolving the same or otherwise.

Giving and granting unto the said agent, attorney and trustee full power and authority to do and perform all and every act and thing, whatsoever requisite and necessary to be done in and about the premises, as fully, to all intents and purposes, as the said corporation might or could do by action of its said Board of Directors or by the authority of its said stockholders, with full power of substitution and revocation, hereby ratifying and affirming all that its said attorney, his substitute and substitutes, shall do or cause to be done by virtue of these presents.

*In Witness Whereof*, the said parties have hereunto caused the name of the said corporation to be affixed and have set their personal hands, this 25th day of March, 1912.

C. D. SLAUGHTER.

C. K. SLAUGHTER.

ADA D. SLAUGHTER.

J. N. C. LOTTRIDGE.

State of Idaho,

County of Lemhi,—ss.

On this 25th day of March, 1912, before me, J. P. Nixon, Jr., a notary public in and for the said county

of Lemhi, State of Idaho, personally appeared C. D. Slaughter and C. K. Slaughter, personally known to me to be the persons whose names are subscribed to the foregoing instrument, and they each acknowledged to me that they executed the same.

*In Witness Whereof*, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Seal.)

J. P. NIXON, JR.,

*Notary Public in and for Lemhi County, Idaho.*

My commission expires May 6, 1914.

State of Idaho,

County of Lemhi,—ss.

On this.....day of....., 1912,  
before me, .....  
a.....in and for the said  
County of Lemhi, State of Idaho, personally appeared A. K. Carl, personally known to me to be the person whose name is subscribed to the foregoing instrument, and she acknowledged to me that she executed the same.

*In Witness Whereof*, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

.....

State of Idaho,

County of Ada,—ss.

On this 29th day of March, 1912, before me, John Driscoll, a Notary Public in and for the said County of Ada, State of Idaho, personally appeared Ada D. Slaughter, personally known to me to be the person

whose name is subscribed to the foregoing instrument and she acknowledged to me that she executed the same.

*In Witness Whereof*, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Seal.) JOHN DRISCOLL,  
*Notary Public in and for the County of Ada,  
State of Idaho.*

State of California,  
County of San Mateo,—ss.

On this 3rd day of April, 1912, before me, E. S. Moulton, a Notary Public in and for the said County of San Mateo, State of California, personally appeared J. N. C. Lottridge, personally known to me to be the person whose name is subscribed to the foregoing instrument, and he acknowledged to me that he executed the same.

*In Witness Whereof*, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Seal.) E. S. MOULTON,  
*Notary Public in and for the County of San  
Mateo, State of California.*

Endorsed: Filed March 9, 1915.

A. L. Richardson, Clerk.

They are identical; I think one is in fact a carbon of the other. I didn't have charge of the company's property as such trustee prior to the execution of these papers. Perhaps there might have been two or three days, something like that, Mr. Budge, while

the papers were being prepared and forwarded to the parties. The assets of the Salmon Lumber Company, at the time of my appointment as trustee, consisted of a stock of lumber, and a lumber office and store building and some sheds situated on leased ground, and some unpaid accounts, perhaps two or three notes, was all that ever came into my possession. The inventory that was taken about the time that I took charge, speaking from memory, showed a value of the assets, the lumber and buildings and so forth, of between \$10,000.00 and \$10,500.00, as I recall it. I am unable to give the amount of the notes and bills receivable but approximately was in the neighborhood of three or four thousand dollars. The property has been disposed of, that is, a contract of sale has been made. The title hasn't entirely passed. It was sold to M. W. Freedorf, of Leadore. I think I had better make a short explanation with reference to that. We took another inventory at the time the sale was made, in November, I believe, of 1912, which showed between nine thousand and nine thousand five hundred dollars in value, other than the accounts and the notes. The buildings were situated on leased ground and when I had a chance to sell the property the party objected to taking it over without any title or any chance to stay there, in case the party owning the ground wanted him to move off, so I made arrangements to sell the property for approximately the invoice value and purchased the lot on which the buildings stood, and turned that in at about the invoice price, and paid \$1500.00 for the

ground. The net amount realized from the sale of these assets, taking into consideration the fact that I purchased the lot, was \$7600.00. Some of the notes and accounts outstanding have been collected. Perhaps some of them are collectible as yet, and some are not collectible.

Q. Are you able, from your familiarity with the affairs of the company, and its asseets, to state what amount will be paid to creditors, what percentage of their claims?

A. I cannot state it exactly. I can state an amount, a percentage beyond which the company will not be able to pay.

Q. And would the percentage which you are able to fix in that manner, would you be certain that it would not exceed that percentage?

A. Yes, sir. I can't fix the amount that can be paid, because I can't state how much I will be able to collect, but if everything is collected which is collectible, the company will not be able to pay in excess of 50 per cent of the obligations that it had when it came into my hands. I know of a claim that was owing by the Salmon Lumber Company to the First National Bank. I am not familiar with the amounts that have been paid, except the amount that I have paid the bank on account of this matter, and so I couldn't say whether Mr. Biscoe's testimony is correct as to the balance due on it or not, except in one particular, which I think he omitted to take into consideration, and that is a credit of \$1204.00, which is in a peculiar situation. The Salmon Lumber Com-



pany furnished some lumber to Lemhi County for a Mr. Stone, of Leadore, and the amount, as I understand, was owing or should have been paid to Mr. Stone, but the warrants were drawn in favor of the Salmon Lumber Company in that amount, and were collected by the bank, and, as I understand, credited on the amount due the Lumber Company. Mr. Stone was also owing the bank a note of some \$2000.00 at that time, and it is our understanding that that amount should have been credited to Stone's account. We brought suit against Mr. Stone, and that credit was allowed in the action, so that it reduced his indebtedness to the bank by \$1204.00, but created an obligation on the part of the Lumber Company to repay the bank the \$1204.00.

Q. Now, when you say that 50 per cent is as much as you will be able to pay, do you mean 50 per cent in all, including what you have paid?

A. Yes, including what I have paid. It will not be able to pay more than 50 per cent, including what has been paid to the bank. I have paid to the bank \$1500.00, according to my recollection. Mr. McCormick can correct me if that is not right. I know of no other payments made to the bank on the lumber company's account. I don't think there would be any payments other than those made by myself, but that is a mere matter of opinion. No one else would be authorized to make any payment other than myself that I know of, so that, on the total claim of the bank against the Salmon Lumber Company, as represented by the various notes that were introduced

in evidence, no other payment was made that I know of, except \$1500.00.

Mr. Richards: Do you intend to show that any payments were made between the time of the failure of the bank and the time Mr. Cowen took charge?

Mr. Budge: I shall do that, yes.

Cross-examination by Mr. Richards:

I received from the inventory of the lumber, as shown by the inventory, somewhere between \$10,000 and \$10,500. The inventories have passed from my hands, and I haven't them all, and my recollection is that I also received three or four thousand dollars in bills and accounts receivable. The teams and wagons were all included in the inventory. I purchased the ground on which the lumber rested for \$1500.00 and paid that out of the selling price of the lumber.

Q. Why did you take a second inventory, which you say was about \$9500.00?

A. After I took charge of the property, it was in an exposed condition, and I didn't think it advisable to leave it there without somebody to look after it, and if I had somebody looking after it he might just as well be selling from the stock when opportunity offered, and in that way the stock was lessened during the period when I took charge, and when I sold to Mr. Freedorf, and in order to ascertain the amount, or to arrive at a basis to deal with Mr. Freedorf, we had to take another inventory. I don't think the lumber company will be able to pay 50 per cent, Judge Richards, but it won't exceed that amount. The sale price of \$7600.00 was the very best I could

do. In fact, it was the only opportunity I had to sell.

Cross-examination by Mr. Whitcomb:

Through an agent, not by myself, I made considerable minor sales about the town before the sale to Mr. Freedorf. The \$7600.00 was the net amount received on the sale to Mr. Freedorf. The expense of keeping the place running about ate up what the sales amounted to, and I could see that if I continued to pursue that method there would be practically nothing left when it was all sold out. The stock was getting in very poor condition. There were a great many culls, and the lumber in many cases was damaged, and I thought the best thing to do was to dispose of it at the best price I could get, at the first opportunity. The value of the property which I sold between the time I took possession and the time I made the sale to Mr. Freedorf would be in the neighborhood of \$1000.00.

Q. You included the teams and horses in this lumber, but there was other kinds of property there otherwise than lumber, teams and horses, was there not?

A. There was a wagon or two, and perhaps a sled, but it would be property of that nature that would be used in connection with a lumber yard. There was some paper and some cement, I believe, and I don't recall what all now, but there was paper and cement. It was taken into consideration when the inventory was made. It was all inventoried as the property of the lumber company.

Q. What was the amount of the indebtedness of the Salmon Lumber Company other than the indebtedness to the First National Bank?

A. There were two notes to the Leadore State Bank, I think for \$2500.00 each, upon which some payments had been made, which would reduce them to the neighborhood of \$4500.00. There were some outstanding bills, and I believe a note to a Portland wholesale lumber company, the amounts of which I cannot give you now, but I wouldn't think they would exceed \$1000.00 altogether. I have made payments on these other claims.

Q. And you have made these payments pro rata to the bank and the other claims?

A. Yes, except that I think I haven't given the bank, that is, the First National Bank, quite as much as I have the others. I think it is 20 per cent all around, and I think I have hardly paid 20 per cent to the bank. The total indebtedness of the company when I took charge was, as I understood, between \$23,000.00 and \$24,000.00.

FRANK R. McCORMICK, recalled on behalf of the plaintiff, testified as follows:

Q. Mr. McCormick, inquiry has been made as to the payments made by the Salmon Lumber Company after the failure of the bank, between the time of the failure of the bank and the time that Judge Cowen took charge of the Salmon Lumber Company's affairs. Will you state what payments were made?

A. In the first place, there was an off-set of \$484.-80, made on the 11th of July, 1911. I don't remem-

ber clearly, but I presume that they had that balance on the book, and we off-set it on their note, \$484.80. Then there were six payments made to me at different times by Mr. Slaughter, the manager of the Salmon Lumber Company, in various amounts, aggregating \$2876.00. They are marked here as credited on note 2140, all of them.

PLAINTIFF'S EXHIBIT NO. 27.

No. 2140.                      Salmon, Idaho, July 1, 1910.

Six months after date, for value received, and without grace, I, we or either of us promise to pay to the order of The First National Bank of Salmon, \$3500.00, Three Thousand Five Hundred Dollars, in lawful money of the United States of America, at The First National Bank, Salmon, Idaho, with interest thereon in like money from date until paid, at the rate of 10 per cent per annum, interest to be paid. . . . . and if not so paid, the whole sum of both principal and interest to become immediately due and collectible.

And in case suit is instituted to collect this note, or any portion thereof, we promise to pay, besides costs and disbursements allowed by law, such additional sum as the Court may adjudge reasonable as attorney's fees in said suit or action.

SALMON LUMBER CO., LTD.,

By F. W. CARL, President.

A. D. SLAUGHTER, Sec.

The following endorsements appearing on the back of said note:



July 19, 1911, paid int. 1 year, \$350.00, per Examiner in charge, L. 14.

11-8-11 paid a/c Prin., \$300.00.

11-7- paid by offset, \$484.80.

12-1-11, paid a/c Principal, \$1000.00.

12-15, paid a/c Principal, \$100.00.

12-18, paid a/c Principal, \$50.00.

1-8-12, paid a/c Principal, \$226.00.

1-31-12, paid a/c Principal, \$100.00.

Plaintiff's Exhibit No. 27 is the note upon which the credits were endorsed. I find, however, that one credit of \$100.00 is not endorsed on that note. One credit in addition to those shown thereon, and I want to add that there was \$350.00 interest paid on that note, endorsed July 15, 1911. May I make a correction, Judge?

The Court: Certainly.

A. That off-set of \$484.80 may have been November 7th. I think I testified to it July 11th. It is one of these seven-elevens.

Mr. Richards: It seems you haven't offered that note heretofore in the case.

Mr. Budge: No, that note hasn't been introduced before.

Mr. Richards: Why should the payments be made on that note?

Mr. Budge: I don't know why. I suppose the Receiver would be permitted to endorse them wherever he pleased, unless they requested that they be endorsed elsewhere. We contend that these credits are not on this indebtedness that is proven by the

other notes. You asked for payments that were made and I wanted to clear up the whole situation. We haven't any objection to showing payments, but we want to show where they were applied. I had no interest in showing the payments.

The Court: Is this note you have just shown me here in addition to those you have introduced this morning?

Mr. Budge: That is my understanding, but I didn't offer it this morning because it isn't included in the bill, but when counsel called for the payments I had to produce the indebtedness on which the credits were endorsed.

The Court: Well, proceed.

Mr. Richards: I can't see how it is material to the case at all. If it is a credit on the amount proven it is all right; if it isn't, it shouldn't be in there. It just encumbers the record. I supposed when he offered payments it related to payments applied on the notes that they proved against the company.

Mr. Budge: It was a misunderstanding. Counsel asked if I intended to show payments made prior to the appointment of Judge Cowen, and I told him I would do so, if he desired. I had no interest in showing them, but simply did it for the purpose of complying with counsel's suggestion. I didn't have to show it otherwise, and I wouldn't have shown it otherwise.

Mr. Richards: I don't care. It doesn't affect us if it hasn't anything to do with the indebtedness proven.

Q. Mr. McCormick, do you know anything about a company which has been referred to in the evidence as a lime company? I think it is called—it may be called the Salmon Land and Mines Company—is that it?

A. I don't recall the name of the company, but I do recall the circumstances that we had some bonds of some such company as that, or stock. It was the Lemhi Brick & Lime Company. I know nothing about the financial condition of that company, only from what I have learned from inquiry. The company is bankrupt.

Cross-examination by Mr. Whitcomb:

The information I received as to the financial standing of the Lemhi Brick & Lime Company was from other parties. It was from Mr. Pollard and Mr. Wicklund, who composed the company. They claimed they had some holdings. Mr. Pollard's statement was that if the bank wouldn't help him to do the assessment work he would lose everything he had. My information is that the assessment work was not done, and therefore it is simply my conclusion that they lost it all. I understood from Mr. Pollard that the land was taken up under the mineral laws. I don't know, as a matter of fact, whether they did or did not do the work. I know where the land is located. I have only seen it from the railroad as I passed by. I have seen where their operations were, from the railroad, and the lime coming from there. They told me it is of good quality. I don't know anything about it personally. I don't

question that fact. I haven't heard positively that the work wasn't done.

H. G. KING, a witness duly called and sworn on behalf of plaintiff, testified as follows:

My name is H. G. King. I am one of the defendants and formerly President of the First National Bank of Salmon. I know about the company known as the Idaho Coal & Land Company. It was organized by one J. D. Richards, and Lamborn and myself. It wasn't incorporated. It was a sort of a partnership, more than anything. That company has not any property now. It had property at one time but not since the failure of the bank, and has none now and hasn't had at any time since the failure. I am not familiar with the company called the Salmon Land & Mines Company. There was no such corporation as that. It was a name given, called the Salmon Land & Mines Company, by a young fellow that started in the real estate business—well, I can hardly recall the year, it is so many years ago—he was located on the corner of the Sheenan block, and he just styled himself the Salmon Land & Mines Company. He and his father I think was really engaged in the land and investment and mining business, and he designated his title as the Salmon Land & Mines Company. I know of no property the company has had since the failure of the bank.

I know John R. Wheeler. As to his financial condition I know that he built a house there in Salmon that Mr. Langsdorf is now occupying, and I have never heard of it having been transferred from his

name. If a mortgage was foreclosed on that property, I don't know that. Mr. Wheeler told me that he had some valuable property in Pittsburg. The only information I have is from Mr. Wheeler and Mr. McCutcheon himself. Mr. McCutcheon knows of the property that Mr. Wheeler holds about eight miles out of Pittsburg. The members of the corporation, the Salmon Lumber Company, that is, the stockholders in it, as shown by the articles of incorporation, Plaintiff's Exhibit 16, and also as shown by the assignments which were made to Judge Cowen as trustee, are C. D. Slaughter, my son-in-law; my daughter, C. K. Slaughter; my daughter, A. K. Carl, and J. M. C. Lottridge, formerly cashier of the bank but no relative of mine. I am familiar with certain loans that have been referred to in the evidence, made to Mr. Harry Brown. I know of a loan which was made for \$6250.00, as shown by Plaintiff's Exhibit 15. Mr. Brown, the maker of this note, was in the sawmill business of Lick Creek, Lemhi County, and had purchased two million feet of lumber from the company, and I gave him permission to draw on the bank to a certain extent to cut this lumber. He commenced operations in 1908, I think it was, and made an overdraft by his checks, we honoring his checks as they came in. As soon as they amounted to—the first was \$700.00, and he came in and gave us a note for \$700.00. Then on his next pay roll he still kept drawing his checks on the bank, and when it amounted to \$1500.00 he came in and gave us another note for \$1500.00, and later on another one.



The Court: Did the \$1500.00 note cover the \$700.00 note?

A. Covered the overdraft that had accumulated in the meantime.

The Court: So there were two notes outstanding?

A. Yes. Then later on he covered his overdraft again by giving another note. This continued in this way until it reached the sum of \$6250.00, and these individual notes were consolidated then into this one note.

The Court: This large note of \$6250.00 also covered any open account he had at that time, at the time the note was given—did it cover all of his indebtedness?

A. It covered all of his indebtedness at that time, yes. There was no straight loan, Your Honor, made to him for \$6250.00. It was an accumulation of this indebtedness that had arisen from time to time, and eventually put into one note.

Witness was here shown Plaintiff's Exhibit 28.

PLAINTIFF'S EXHIBIT NO. 28.

No. 5595. Salmon, Idaho, January 2, 1911.

On demand, after date, for value received, and without grace, I, we or either of us promise to pay to the order of The First National Bank of Salmon, \$6500.00, Six Thousand Five Hundred Dollars, in lawful money of the United States of America, at The First National Bank, Salmon, Idaho, with interest thereon in like money from date until paid,

at the rate of 10% per annum. Interest to be paid semi-annually, and if not so paid, the whole sum of both principal and interest to become immediately due and collectible.

And in case suit is instituted to collect this note, or any portion thereof, we promise to pay, besides costs and disbursements allowed by law, such additional sum as the Court may adjudge reasonable as attorney's fees in said suit or action.

HARRY BROWN.

Due.....190...

P. O.....

Q. Is that a straight loan?

A. Just the same condition as the other loan was. I made it in two separate notes there, because, to discount one of them—I expected to discount one of them, so as not to leave it an excess loan.

Q. It was not discounted?

A. It was not discounted. I failed to discount it. That was my intention in making it that way, because the \$6500.00 would come within the law of an excess loan, and the other \$6250.00 I expected to discount. They were both made approximately at the same time. As a matter of fact, there was an excess loan of \$6250.00 on account of the fact that I failed to discount it.

Mr. Budge: In view of that explanation, Your Honor, I will say to Your Honor that we have become somewhat confused about the books and accounts in straightening out this Brown loan. I offer in evidence this \$6500.00 note, which was given on the

same date as the \$6250.00 note, for the purpose of explaining this transaction, and we claim an excess loan of \$6250.00, which we pleaded, but I wasn't aware of just how the matter was made up, of what the loan consisted.

The Court: When both of these notes were out, Mr. Brown owed, on account of the two notes, \$12,750.00?

A. That is right, Your Honor.

The Court: One note of \$6500.00 and one of \$6250.00?

A. Yes, sir.

Mr. Richards: Of course the dates vary somewhat from your pleadings, and the amount varies entirely from your pleadings.

Mr. Budge: I shall aske leave to amend the bill, in view of the fact—the dates which we pleaded here were the dates shown on the books, which at times did not correspond, but the numbers were the same in most instances, and there were so many books and accounts here that we selected the wrong book to give the dates from, but I think with this explanation we will ask leave to amend the bill to conform to the proof in this regard, as in respect to the \$3500 loan which was pleaded as \$2500, and the dates of these other notes.

The Court: You may proceed, Mr. Budge.

Mr. Budge: I will ask the Court if the bill may be amended accordingly.

The Court: In what respect?

Mr. Budge: I desire to amend the pleading to show that on this date there was the excess loan made of \$6250.00, and the paragraph will have to be amended just a little bit in its phraseology, so as to comply with the proof which is adduced here, and also to amend it in showing the loan made to the Salmon Lumber Company.

The Court: You are not asking to increase the amount which you claim was excessive here?

Mr. Richards: Yes, they are increasing it.

The Court: What I am trying to get at is what you want to do. What is the amendment you want to make in regard to the Brown loan?

Mr. Budge: I shall have to ask that the allegation be amended to show that between certain dates, which were named by Mr. King, Mr. Brown became indebted up to a certain amount, and that on January 2nd, the date shown by these notes, these notes were taken, and representing the loan which was then outstanding against Mr. Brown. Now we have pleaded here that on the 19th day of July Mr. Harry Brown was owing the bank \$3000.00, and an indebtedness of \$603.80 on an overdraft, and that they made another loan to him of \$3000.00 on that date, which makes \$6603.00, and that on the 12th day of January, 1911, they made him a loan of \$6250.00, so that there is no increase in the indebtedness at all; it is simply a statement different from the allegations here as to the manner in which it arose.

The Court: This \$6500 note takes the place of those two \$3000 notes?

Mr. Budge: I assume that that is the case, under the explanation of Mr. King; I assume that the overdraft was covered by those notes.

The Court: You may amend.

Mr. Budge: And I want to ask you at this time permission to attach to the Fourth Amended Bill that schedule of overdrafts attached to the Second Amended Bill. It is by reference, but it has never been really attached to it. I would like to have it taken from the Second Amended Bill and attached to the Fourth Amended Bill.

Q. Now, Mr. King, are you acquainted with Mr. Guy E. Bowerman, the defendant?

A. I am. I think I attended all meetings of the stockholders and board of directors of my bank held between the first of January, 1909, and the time when the bank suspended business in 1911. The records would show it. I don't remember at present of being absent. I recall no meeting, either of stockholders or directors, at which I was not present. I think I was always present. Mr. Bowerman was never present at any meeting of stockholders or directors, special or regular.

Cross-examination by Mr. Richards:

We never notified Mr. Bowerman of any meetings.

Mr. Budge: Just a moment. I move to strike that, as immaterial, upon the ground that the by-laws fix the date when regular meetings are to be held, and that no notice would be necessary as to them and he would be presumed to know when those meetings were held.



The Court: You asked about special meetings as well.

Mr. Budge: I mean as to regular meetings.

The Court: Well, the evidence may go in, and it will be considered for what it is worth.

We only had one copy of our by-laws, the one spread on the minutes, the one introduced here today. We didn't notify Mr. Bowerman that we had any by-laws. We just passed the by-laws there by the President and directors, and had them spread on the minutes of the meeting, and didn't have any copies printed of them and never sent him a copy, not to my knowledge. I think Mr. Bowerman, during the times mentioned here, lived at St. Anthony all the time. Anyone leaving from Salmon to St. Anthony, or from St. Anthony to Salmon, it would take practically a little over three days, or approximately three days. You have to lay over at Armstead at night. In coming from St. Anthony you first of all change at Idaho Falls; then you go on up to Armstead and the trains arrive there, I think, about three o'clock in the morning, and then you wait until eight o'clock, when the train leaves there; and then the train runs every other day. In the years 1906, 1907, 1908 and 1909, before the railroad was in there, it was a question of a two-day trip by stage from Armstead, and that continued up until the railroad was built. I forget the date the railroad run in there. 1910, yes, sir, it was. I know it was, now. Mr. Bowerman never made any trip, and we never made any arrangements to pay any expenses for Mr. Bowerman.

There was offered in evidence published statements of the condition of the First National Bank of Salmon, published in the issues of the Lemhi Herald, February 10th, 1910, July 7th, 1910, September 8th, 1910, November 17th, 1910, and March 23rd, 1911, which said statements were marked Plaintiff's Exhibits 29 to 33, inclusive. Said exhibits were admitted upon condition that it be shown that defendant Bowerman had knowledge of said published statements. There was also introduced and received in evidence a letter written by defendant Bowerman and marked Plaintiff's Exhibit 34, and also Plaintiff's Exhibit 35.

PLAINTIFF'S EXHIBIT NO. 34.

St. Anthony, Idaho, August 29, 1911.

Mr. H. G. King,

Salmon, Idaho.

Dear Sir:—

Subject to our conversation regarding the surrender of the stock of the First National Bank of Salmon.

First, let me say by way of explaining my position, that I do not now, and never have considered myself in any way responsible for the management of the bank and its failure, as I have never had any part whatever in actively conducting its business, and whatever censure, if any, may attach to those who have been in active charge, cannot in any way be considered in connection with the writer. As a nominal director of the bank, I commenced in July, 1910, writing the President of the institution and

warning him as to what in my judgment would be the consequences if the policy of the management was not changed, various matters corrected and improved and more of the notes collected, and the reserve kept up. I have also written the vice-president along the same lines. Having been a director in the institution, I felt that I would not have been discharging my duty had I not called your attention at various times, in no uncertain terms, to what seemed to me to be a very hazardous manner of conducting the bank. And this, you know, I have done repeatedly in the strongest language at my command. I commenced, as I say, in July, 1910, and I was prompted to do this by seeing the statement of the bank which was published under date of June 30, 1910. Should there be any question with any of those that you may be associated with as to whether or not this statement is true, you can no doubt produce them the original letters, and if not, copies can be furnished from my office. At no time was I consulted, either as to the management of the bank, its business transactions or its policy, and, as an illustration of this fact, I would say for your information that until after the Langsdorf purchase was made and the deal closed, I knew nothing whatever about it.

Also, in connection with the erection of the bank building, I was never advised that such a move was contemplated and knew nothing whatever about it until after the building was finished. I also state a fact when I say that I have never even received a statement of the condition of the bank, from the

bank, either the usual published statement or one for my personal use, without making a special request, and in some cases I have had to write several times before the statement was sent me. The conditions so far as obtaining desired information in regard to the condition of the institution were so unsatisfactory that prior to the January meeting of the stockholders and the election of directors, I had fully determined to sever my connection with the institution as a director, and I believe that an examination of your records will show that I have not accepted or qualified as a director since January, 1910, at least, I do not recall the fact of having done so.

Please understand that what I have said above is no complaint, it is merely a statement of facts, all of which is preliminary and not germane to the subject matter; the latter being a proposition I wish to make to whoever may be interested, in regard to my stock. I wish to say further, from what I can learn of Mr. Yeager, the present receiver, and his methods of doing business generally and in this case in particular, I am thoroughly convinced and firmly believe that he will not only be able to pay off all outstanding obligations, but will save something for the stockholders. Keeping that thought in mind, I can see no reason for me to surrender my stock without consideration. As I understand the offer, Mr. Emerson Hill and his associates propose to take up the business of the First National Bank and continue it, providing the \$50,000 in stock, now outstanding, will be turned over to them without cost. While I realize the value of this

offer to those who have been actively engaged in the management of the bank and are in consequence responsible for the present condition of affairs, personally, I can only view it from a business standpoint. The ethical, or what might more properly be termed the sentimental part, does not appeal to me as it might with a resident stockholder whose local pride was at issue. As a business proposition, I admire the judgment and foresight of the men making this offer, as, in my opinion, it is a most profitable business undertaking and will result, in a few years, in a profit of \$50,000 to those interested.

I would like at this time to discuss their offer and make such suggestions in connection with the reorganization as nearly thirty years of practical banking experience prompts, but this letter is already too lengthy. This is my proposition: If you will pay me \$6,054.25, either in cash or good paper maturing within the twelvemonth, I will surrender my stock; or, if more acceptable, I will add to this \$6,054.25 that you are to pay me, the sum of \$3,943.75, and take \$10,000 interest with those who are to reorganize. Certainly, under new and competent management, with ordinary business prudence and alertness, and a conservative expense account, a very large per cent of the assets could eventually be collected in full. There is no doubt a considerable prospective loss in the building and fixtures account, but I understand the income from this property is \$2700 annually and it occurs to me that say \$700 of this amount might be set aside each year for taxes and



insurance, or whatever part of the \$700 is necessary to meet these expenses, and \$2000 applied each year toward reduction, thus gradually reducing the loss. The bank has \$50,000.00 capital, \$15,000.00 surplus, and there must be in the neighborhood of \$10,000.00 accrued interest. It seems to me to be utterly impossible for the assets of any bank to shrink one-half of this amount unless it has been intentionally and maliciously gutted. I mean that, in my opinion, it is impossible for such a shrinkage if the reorganization is affected and time enough taken in the usual course of business to nurse along and strengthen the weaker loans. My experience has been that a mighty rotten condition has existed in any institution where 90% of its notes cannot be collected, by taking a reasonable length of time and giving them vigorous attention, and I do not believe any such condition of affairs prevails in the First National Bank of Salmon with such men as Mr. Sinclair and Mr. Andrews on the board. Certainly Salmon and its vicinity is not permanently bankrupt. I believe that business conditions have touched bottom and any change whatever must be for the better. Prior to closing, as I understand it, the bank had an excellent reputation in that locality, controlled a large per cent of the outside business, and I know of no reason why, under stronger and more efficient management, it should not continue to be the leading financial institution in that section of the country. The charter and good will of the institution, even in its present condition, provided reor-

ganization can be quickly effected, should be worth, to live, active men, \$25,000. In view of all the conditions, I consider my offer an exceedingly fair one and especially so, as all of the other stockholders seem to be willing, for reasons best known to themselves, to surrender their entire holdings, making the cost to these new investors merely nominal. I would much prefer to put in a little additional money, as I have suggested in this letter, and join the reorganizers in the rehabilitated institution, rather than to accept the amount which I have named, as I firmly believe and would confidently expect in a few years to recover the full amount of my original investment.

All of which is most respectfully submitted for your consideration.

Yours truly,

G. E. BOWERMAN.

Endorsed: Filed March 9, 1915.

A. L. Richardson, Clerk.

PLAINTIFF'S EXHIBIT NO. 35.

Monday, March 29, 1909.

H. G. King,

Salmon, Idaho.

Dear Harry:—

I have received your letter of March 21st, and also the newspaper account of the taking over of Langsdorf & Company's business, but it did not seem to me that the newspaper item was particularly friendly to the First National. This, of course, may be imagination on my part, and I do not know that it would make very much difference, anyway, but I

would be pleased to know if everything is harmonious so far as the paper and the bank are concerned.

I, of course, do not know what the accrued interest on his loans amounted to, but in purchasing a bank the rule is to pay 90% of the accrued interest and 5% of the deposits which do not bear interest; or, in other words, you figure up the accrued interest on the loans and discounts, deduct 10% therefrom; figure 5% of the check deposits, and add the two together, and this is the price of what is termed "the good will." Figure that up and see how near it comes to \$14,500.

I believe the consolidation was a good business move, but of course it makes an opening for another bank, which was to be expected, and I understand that Quarles and Edwards are organizing a banking and trust company, and of course they will get their share of the business.

The Bank Examiner has been here and he told me he had just been to Salmon so if you get time, better come out and we will have a medicine talk.

Yours truly,

G. E. BOWERMAN.

Endorsed: Filed March 9, 1915.

A. L. Richardson, Clerk.

FRANK R. McCORMICK, re-called on behalf of the plaintiff, testified as follows:

Q. Mr. McCormick, in Plaintiff's Exhibit 34 appears this language: "As a nominal director of the bank, I commenced in July, 1910, writing the presi-

dent of the institution, and warning him as to what in my judgment would be the consequences if the policy of the management was not changed, various matters corrected and improved, and more of the notes collected, and the reserve kept up. I have also written the vice president along the same lines." Did you find among any of the papers or files received by you, as receiver of this institution, any letters signed by Mr. Bowerman, addressed to Mr. King or to the vice president, the president or vice president of the institution, containing any warning such as is indicated by this letter, or any warning at all?

A. I did not. Plaintiff's Exhibit 34 is the only letter among any of the papers received by me that relate to that subject at all, to the mismanagement of the bank.

The aggregate of the claims against this institution filed with me as receiver is \$115,661.78. The amount unpaid upon the claims so filed is \$57,314.16. I have in my hands or under my control as receiver, assets and property amounting roughly to \$42,000.00, which can and will be applied to the payment of the balance due and owing upon these claims. This is the amount as listed. Did you wish my estimate as to the value of them?

Q. Yes, if you can give the value.

A. I should say there wouldn't be more than \$12,000.00 collected of the \$42,000.00. The \$42,000.00 is the face value. That will leave \$45,000.00 unpaid. That, I might explain, is of the principal. That doesn't include interest.

It was here stipulated that of the amount of the bank's claim against Sinclair, said claim being something over \$10,000.00, the receiver will not realize to exceed 50 per cent, taking into consideration all payments that have been made on said indebtedness and all that will probably be made from the Sinclair estate.

It was also stipulated that the abstractor of Lemhi County and the Deputy Assessor, if present, would testify that John Lottridge owns no property in Salmon City and that the only property possessed at all or in which he has any interest stands in his wife's name, and that there are mortgages covering that, and that there is no equity in it out of which the bank could satisfy any claim, and it was further stipulated that said property is not worth more than \$4500.00 and that it is mortgaged for \$4500.00. Plaintiff's Exhibits Nos. 36 and 37 were then offered and received in evidence.

#### PLAINTIFF'S EXHIBIT NO. 36.

*This Indenture*, Made the 10th day of November, in the year of our Lord one thousand nine hundred and ten, between Alice S. Lottridge and John Lottridge, her husband, of Salmon, County of Lemhi, State of Idaho, the parties of the first part, and Ada D. Slaughter, of Salmon, County of Lemhi, State of Idaho, the party of the second part,

*Witnesseth*, That the said parties of the first part, for and in consideration of the sum of Fifteen Hundred Dollars, of the United States of America, to them in hand paid by the said party of the second



part, the receipt whereof is hereby acknowledged, have Granted, Bargained, Sold and Conveyed, and by these presents do Grant, Bargain, Sell and Convey unto the said party of the second part, and to her heirs and assigns forever, all of that certain lot, piece or parcel of land, situate, lying and being in the Salmon City Townsite, County of Lemhi, and State of Idaho, and particularly described as follows, to-wit:

Lot numbered Seven (7) of and in Block number Five (5) of and in North Salmon Village, as the aforesaid lot appears upon the official plat of said village, now on file and of record in Book 1 of Plats, at page 1, in the office of the County Recorder, Records of Lemhi County, Idaho. Together with all water rights, ditches and ditch rights, all buildings and improvements belonging thereto.

Together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

*This Grant* is intended as a mortgage to secure the payment of one certain promissory note of even date herewith, executed and delivered by the said Alice S. Lottridge and John Lottridge to the said party of the second part, of which note in words and figures following, to-wit:

Salmon, Idaho, Nov. 10th, 1910.

One year after date, for value received, and without grace, I, we or either of us promise to pay to the order of Ada D. Slaughter, Fifteen Hundred Dollars, in lawful money of the United States of America,

at the First National Bank, Salmon, Idaho, with interest thereon in like money from date until paid at the rate of 8 per cent per annum.

Interest to be paid semi-annually and if not so paid the whole sum of both principal and interest to become immediately due and collectible.

And in case suit is instituted to collect this note or any portion thereof, we promise to pay, besides costs and disbursements allowed by law, such additional sums as the Court may adjudge reasonable as attorney's fees in said suit or action.

(Signed:) ALICE S. LOTTRIDGE.

JOHN LOTTRIDGE.

And these presents shall be void if such payment be made. But in case default shall be made in the payment of the said principal sum of money, or any part thereof, as provided in said note, or if the interest be not paid as herein specified, then and from thenceforth it shall be optional with the said party of the second part, her executors, administrators, or assigns, to consider the whole of said principal sum expressed in said note as immediately due and payable, although the time expressed in said note for the payment thereof shall not have arrived; and immediately to enter into and upon all and singular the above described premises, and to sell and dispose of the same and all benefit and equity and redemption of the said parties of the first part, their heirs, executors, administrators or assigns, according to law, and out of the money arising from such sale to retain the principal and interest which shall then be

due on the said promissory note, together with the costs and charges of foreclosure suit, including reasonable counsel fees and also the amounts of all such payments of taxes, assessments, incumbrances or insurance as may have been made by said party of the second part, her heirs, executors, administrators or assigns, by reason of the permission hereinafter given, with the interest on the same hereinafter allowed, rendering the overplus of the purchase money (if any there shall be) unto the said Alice S. Lottridge and John Lottridge, her husband, parties of the first part, their heirs, executors, administrators or assigns. And the said parties of the first part do hereby further covenant, promise and agree to and with the said party of the second part, to pay and discharge, at maturity, all such taxes or assessments, liens or other incumbrances now subsisting, or hereafter to be laid or imposed upon said premises, or which may be in effect a prior charge thereupon to these presents, during the continuance hereof, and in default thereof, the said party of the second part may pay and discharge the same, and may, at his option, keep fully insured against all risks by fire the buildings which are now or may be hereafter erected thereon, at the expense of the said parties of the first part, and the same so paid shall bear interest at the rate of 8 per cent. per annum until paid, and shall be considered as secured by these presents and be a lien upon said premises, and shall be deducted from the proceeds of the sale thereof, above mentioned, with interest as provided.

*In Witness Whereof*, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of Frank L. Plummer.

ALICE S. LOTTRIDGE. (Seal.)

JOHN LOTTRIDGE. (Seal.)

State of Idaho,  
County of Lemhi,—ss.

On this tenth day of November, 1910, before me, Frank L. Plummer, a Notary Public in and for said County, personally appeared Alice S. Lottridge and John Lottridge, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

*In Witness Whereof*, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Seal.)

FRANK L. PLUMMER,

*Notary Public.*

State of Idaho,  
County of Lemhi,—ss.

I, J. L. Kirtley, Jr., County Recorder in and for the State and County aforesaid, hereby certify that the above and foregoing is a full, true and complete copy of a mortgage appearing in Book G of Mortgages, at page 72, Records of Lemhi County, Idaho.

And I further certify that there is no satisfaction of the said mortgage, except a partial satisfaction which appears of record in Book F of Mortgages, at page 274, Records of Lemhi County, Idaho.

*In Testimony Whereof*, I have hereunto set my hand and affixed my official seal this 20th day of February, 1915.

(Seal.)

J. L. KIRTLEY, JR.,  
*County Recorder.*

Indorsement: No. 11057. Mortgage.

State of Idaho,  
County of Lemhi,—ss.

I hereby certify that this instrument was filed for record at request of Carl D. Slaughter, at 55 minutes past 11 o'clock A. M., this 8th day of June, A. D. 1911, in my office, and duly recorded in Book G of Mortgages, at page 72.

J. L. KIRTLEY, JR.,  
*Ex-officio Recorder.*

Endorsed: Filed March 9, 1915.

A. L. Richardson, Clerk.

#### PLAINTIFF'S EXHIBIT NO. 37.

*This Indenture*, Made the 2nd day of April, in the year of our Lord one thousand nine hundred and ten, between Alice S. Lottridge and John Lottridge, her husband, of Salmon, County of Lemhi, State of Idaho, the parties of the first part, and Ada D. Slaughter, of Salmon, County of Lemhi, State of Idaho, party of the second part,

*Witnesseth*, That the said parties of the first part, for and in consideration of the sum of Three Thousand Dollars, of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged,



have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto the said party of the second part, and to her heirs and assigns forever, all of one certain lot, piece or parcel of land, situate, lying and being in the Salmon City Townsite, County of Lemhi and State of Idaho, and particularly described as follows, to-wit:

All of that portion of Lot Number 7 of and in Block Number 5 of and in North Salmon Village, as the aforesaid lot appears upon the official map or plat of said village, now in file and of record in Book One of Plats, at page one, in the office of the County Recorder, Records of Lemhi County, Idaho, described as follows:

From the northwest corner of the aforesaid Lot Number 7, in Block Number 5, run S.  $51^{\circ} 30'$  East 69 feet, thence S.  $38^{\circ} 30'$  West 208 feet, thence N.  $51^{\circ} 30'$  West 69 feet, thence N.  $38^{\circ} 30'$  East 208 feet to the beginning.

Together with all water rights, ditches and improvements belonging thereto.

Together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

*This Grant* is intended as a mortgage to secure the payment of one certain promissory note of even date herewith, executed and delivered by the said Alice S. Lottridge and John Lottridge, her husband, to the said party of the second part, of which note in words and figures following, to-wit:

Salmon, Idaho, March 21, 1910.

On demand, after date, for value received, and without grace, I, we or either of us promise to pay to the order of Ada D. Slaughter, \$3000.00, Three Thousand Dollars, in lawful money of the United States of America, at The First National Bank, Salmon, Idaho, with interest thereon in like money from date until paid, at the rate of 8 per cent. per annum.

Interest to be paid semi-annually, and if not so paid, the whole sum of both principal and interest to become immediately due and collectible.

And in case suit is instituted to collect this note, or any portion thereof, we promise to pay, besides costs and disbursements allowed by law, such additional sum as the Court may adjudge reasonable as attorney's fees in said suit or action.

JOHN LOTTRIDGE.

ALICE LOTTRIDGE.

(Endorsed on back of note.)

Interest paid in full to June 1, 1911. Ada D. Slaughter.

And these presents shall be void if such payment be made. But in case default shall be made in the payment of the said principal sum of money, or any part thereof, as provided in said note, or if the interest be not paid as herein specified, then and from thenceforth it shall be optional with the said party of the second part, her executors, administrators or assigns, to consider the whole of said principal sum expressed in said note as immediately due and payable, although the time expressed in said note for the pay-

ment thereof shall not have arrived; and immediately to enter into and upon all and singular the above described premises, and to sell and dispose of the same and all benefit and equity and redemption of the said parties of the first part, their heirs, executors, administrators, or assigns, according to law, and out of the money arising from such sale to retain the principal and interest which shall then be due on the said promissory note. Together with the costs and charges of foreclosure suit, including reasonable counsel fees and also the amounts of all such payments of taxes, assessments, incumbrances or insurance as may have been made by said party of the second part, her heirs, executors, administrators or assigns, by reason of the permission hereinafter given, with the interest on the same hereinafter allowed, rendering the overplus of the purchase money (if any there shall be) unto the said Alice S. Lottridge and John Lottridge, parties of the first part, their heirs, executors, administrators or assigns. And the said parties of the first part do hereby further covenant, promise and agree to and with the said party of the second part, to pay and discharge, at maturity, all such taxes or assessments, liens or other incumbrances now subsisting, or hereafter to be laid or imposed upon said premises, or which may be in effect a prior charge thereupon to these presents, during the continuance hereof, and in default thereof, the said party of the second part may pay and discharge the same, and may, at his option, keep fully insured against all risks by fire the buildings which are now

or may be hereafter erected thereon, at the expense of the said parties of the first part, and the same so paid shall bear interest at the rate of 8 per cent. per annum until paid, and shall be considered as secured by these presents and be a lien upon said premises, and shall be deducted from the proceeds of the sale thereof, above mentioned, with interest as herein provided.

*In Witness Whereof*, the said parties of the first part have hereunto set their hands and seal the day and year first above written.

Signed, sealed and delivered in the presence of  
Frank L. Plummer.

ALICE S. LOTTRIDGE.     (Seal.)

JOHN LOTTRIDGE.     (Seal.)

State of Idaho,  
County of Lemhi,—ss.

On this 19th day of August, 1910, before me, Frank L. Plummer, a Notary Public in and for said County, personally appeared Alice S. Lottridge and John Lottridge, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

*In Witness Whereof*, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Seal.)

FRANK L. PLUMMER,

*Notary Public,*

Lemhi County, Idaho.

State of Idaho,  
County of Lemhi,—ss.

I, J. L. Kirtley, Jr., County Recorder in and for the State and County aforesaid, hereby certify that the above and foregoing is a full, true and complete copy of a mortgage recorded in Book G of Mortgages, at page 70, Records of Lemhi County, Idaho.

And I further certify that no release or partial release of said mortgage appears of record in the Recorder's office of Lemhi County, Idaho.

*In Testimony Whereof*, I have hereunto set my hand and affixed the seal of said office, this 20th day of February, 1915.

(Seal.)

J. L. KIRTLEY, JR.,  
*County Recorder.*

Indorsement: No. 11047. Mortgage.

State of Idaho,  
County of Lemhi,—ss.

I hereby certify that this instrument was filed for record at request of Alice S. Lottridge, at 5 minutes past 2 o'clock P. M., this 5th day of June, A. D. 1911, in my office, and duly recorded in Book G of Mortgages, at page 70.

J. L. KIRTLEY, JR.,  
*Ex-officio Recorder.*

Endorsed: Filed March 9, 1915.

A. L. Richardson, Clerk.

Mr. Budge: You also admit that that is the only property that is shown on the records in his name, or her's?



Mr. Whitcomb. I never heard of his owning any other in Lemhi County.

Cross-examination by Mr. Whitcomb:

I resided in the John Lottridge house situated on the property referred to for some time. It must have been a year and a half. I secured the property by the consideration of a rental I paid. I paid the money to Mrs. Alice S. Lottridge, from whom I rented the property. I did not know at that time that it was community property. That question was never raised and I never inquired. I did not endeavor to ascertain whether I could apply that rental money to any of the indebtedness of the bank or not. I paid \$30.00 a month at first and then it was reduced to \$20.00. I paid a total of four or five hundred dollars.

Q. What were the total assets of the bank when you took charge of it?

A. I would explain that I took charge of the bank in September, but that I was charged with the bank as it stood on the 7th day of June, when it was closed, so that any figures I would give would refer back to the 7th of June, although I was not actually in charge until September. The total assets at date of suspension, \$325,624.12. They consisted of notes, \$279,979.32; other assets, \$45,644.80. The other assets would include everything in the way of assets except the notes. There was the equity in the Pioneer Bank building, the set of bank furniture and fixtures in the Pioneer Bank building, and the set of bank furniture and fixtures in use by the First National Bank. The part of these assets which consti-

tuted overdrafts at that time was something in excess of \$9000.00. The total liabilities at that time were \$273,719.14. That did not include the capital stock which was issued by the bank. I received from an assurance association \$17,000.00 and from the stockholders \$24,364.00. I expect yet to receive from shareholders or stockholders \$2,500.00 to \$3,000.00 from the Sinclair estate, and if I should receive \$3000.00 from the Sinclair estate it would make a total from stockholders of \$27,000.00. Since I have been there I have paid to the depositors of the bank \$58,347.62 and I have on hand at the present time \$90.95. Let me explain: This is from our report made the 31st of December. There have been, of course, some few transactions since that time. No depositors were paid and no dividends paid prior to the time I went in and took charge.

Q. What is the total amount of money which has been collected by you and your predecessors in office as receiver of this bank, the total, gross?

A. There has been \$3250.00 collected by the Comptroller from interest on the bonds that we have held. Counting that, the total amount collected is \$244,729.65, that is money.

Re-direct Examination by Mr. Budge:

But after all, as a summary of the condition so far as the assets and liabilities are concerned, there will be approximately \$45,000.00 unpaid, taking into consideration what I may yet realize from assets now in my hands.

Re-cross Examination by Mr. Whitcomb:

I stated that I had about \$45,000.00 assets now, on which I would realize about \$12,000.00.

It was stipulated and agreed that Frank M. Pollard, to whom loans were made as set forth in a bill of complaint, said loans being evidenced by plaintiff's Exhibits 13 and 14 is insolvent, and has been since the failure of said bank.

FRED V. BISCOE, being re-called on behalf of the plaintiff, testified as follows:

With reference to the Harry Brown loans, there was no security taken until after the receiver was in charge. There was no security taken at the time the loan was made for the Pollard loans or for any of the loans of the Salmon Lumber Company. I believe there was some security taken for the Pollard loan in the shape of the mortgage which is referred to in the cross-complaint of the receiver, in the case of Western Loan & Savings Company against Pollard, which is shown by Plaintiff's Exhibit 24, after the receiver or the bank examiner had charge and that is the proceeding in which the bank realized \$150.00 on the security so taken and is the only amount that has been paid on those loans.

Cross-examination by Mr. Millsaps:

There was a lot taken on the Pollard loan; that was the one Mr. Budge mentioned and that is still owned by the bank. The value of the lot has been estimated by two real estate agents. We still own the lot. We bought it for \$150.00. We have been trying to sell it.

Cross-examination by Mr. Whitcomb:

I am not entirely familiar with just what property was turned over to the bank by Harry Brown. Most of that was turned over before I was in charge. I understand that he gave a mortgage on his property. I couldn't say personally whether Brown turned over to the bank all his property or not. I know he turned over some. I don't know how much lumber he turned over to the bank.

Re-direct Examination by Mr. Budge:

I have offered this lot for what we bought it for and we have had no offers to purchase at that price or any other price.

FRANK R. McCORMICK, being re-called on behalf of the plaintiff, testified as follows:

The chattel mortgage given by Brown after the failure of the bank covered a sawmill from 30 to 40 miles from Salmon, and the lumber, the sawed lumber—I don't know how many feet; there were several hundred thousand feet. Brown gave me written authority to dispose of that as best I could and apply it on his debts. That lumber I had hauled to Salmon, paying \$10.00 or \$10.50 a thousand for the hauling; rented a lot in Salmon and started into the lumber business, selling off as we could from time to time. That lumber account, the expense of the hauling and all, used up all the proceeds. There wasn't \$10.00 one way or the other; I can tell from the books exactly what it was; but I don't think there is \$10.00 left, and there is still a bill outstanding that would wipe that out. The sawmill we sold for \$1000.00 which was credited to Brown. That is all the prop-



erty we received from Brown and all we have received upon the indebtedness of Brown to the bank was \$1000.00.

With reference to the overdraft of Mr. John R. Wheeler I made an investigation concerning what property Mr. Wheeler had in Pittsburg, through John S. Went, an attorney of Pittsburg that had acted for me in some other matters. He reported that he found no property belonging to Wheeler except a dwelling house in Sewickley, one of the suburbs of Pittsburg, but that that was so covered by mortgages and other liens that it would be a useless expense for us to take a judgment against Wheeler.

Cross-examination by Mr. Whitcomb:

I sold the lumber after it arrived in Salmon at various prices, whatever we could get, in little lots; some of it as high as \$20.00 a thousand, but it deteriorated very rapidly. I don't know that values were going down; there wasn't much demand and most of it was sold for flumes and other purposes where rough lumber was used. I knew what the market value of lumber was about the time I came to Salmon. I inquired. I found that good lumber in the yards there was selling some of it as high as \$25.00 a thousand. This was rough lumber that I got. There were no teams or sleds or wagons or anything of the kind turned over to me by Mr. Brown.

Q. Did you know what the value of this sawmill was that you sold for \$1000.00?

A. I saw the mill; I inspected it. I don't know much about sawmills, but I should have supposed



that the mill was worth \$3000.00, if it were in any place where it could be used. But it was 40 miles from Salmon, in the woods, and \$1000.00 was the best offer we got. I don't know what creek the mill was on. There was plenty of timber there and the sawmill was well located for sawmill purposes if there had been any demand for lumber. I never heard of Mr. Brown having purchased some timber from the government. When I visited the premises there was no cut timber or uncut timber or timber which was in the form of dimension stuff that I know of, and I saw no logs. I don't know whether Brown had any interest in any standing timber. The question was never raised.

Cross-examination by Mr. Millsapps:

The chattel of which I spoke was given to the receiver for the bank.

Cross-examination by Mr. Whitcomb:

A certain paper was here marked Defendant's Exhibit 1.

I don't recall ever having seen Defendant's Exhibit 1. I do not know how it happened to be among the papers of the bank. I would explain that at one time I went down to the Salmon Lumber Company with a representative from the Comptroller's office, Comptroller of the Currency, and Mr. Slaughter, the manager, spoke of an inventory that had been made and he said that the inventory showed some figures,—he had before him a paper and whether this is the one or not I don't know. I didn't examine it. I didn't take it away with me.

WILLIAM C. SMITH, a witness duly called and sworn, on behalf of the plaintiff, testified as follows:

My name is William C. Smith, and I reside at Salmon. I have heretofore been Clerk of the Court at Salmon for eight years. My term expired in January, 1911. I was clerk for eight years preceding that and since that time I have been an abstractor, in the abstract business at Salmon. I think I am familiar with the records of Salmon, and the ownership of property in and about Salmon. I know Mrs. Saphronia Pollard of Salmon. I know what property she owns at Salmon. It consists of a dwelling house where she lives, a home. I think that is all she owns now. It is encumbered for, I think, about \$3000.00. It is mortgaged for most all it is worth and she has no other property that I know of. There is a declaration of homestead on this property.

Cross-examination by Mr. Whitcomb:

All I know with reference to her property is what is disclosed by the records. I know of some personal property that is mortgaged, but I know nothing of any that isn't mortgaged. I don't know whether she has any United States bonds or not and I don't know whether she has made investments in real estate elsewhere than in Lemhi County.

Q. Do you not know that some time ago she owned a mortgage on some property in Lemhi County to secure a note for about \$6000.00?

A. The mortgage was for \$9000.00, I think. She held it. I know what she has done with it. She sold it to the Pioneer Bank. I don't know what she did

with the money. The sale was perfected prior to 1911, I can't tell you the date. It was while I was in the clerk's office; I don't know just when; I can't tell you exactly. There was an assignment of mortgage recorded at that time. Know that since the failure of this bank Mr. and Mrs. Pollard have been taking trips through the east and the south. I presume they were pleasure trips. They were east, and visited in the east and south. I don't know how they did raise the money, to take that trip. Mr. and Mrs. Pollard are old residents of Salmon. I don't believe they have made more than one trip out of Salmon in the last thirty years. I recall only the one trip and that was the one since the failure of the bank and I have resided there for forty-seven years. I am well acquainted with them as neighbors and have known them for forty years. They are now making a living by Mrs. Pollard running a bakery, selling bread, and Mr. Pollard is peddling it, peddling the bread.

Re-cross Examination by Mr. Whitcomb:

I think Mr. Pollard does work around there by the job whenever there is brick work there.

Plaintiff rests.

Mr. Richards: I move to dismiss the case as to the defendant Bowerman because they have not in anywise brought him within the terms of Section 5239 of the Revised Statutes of the United States as interpreted by the courts of the United States. I can present it very briefly.

The Court: I think, Judge Richards, that I will prefer to consider this motion at the close of the trial.

I will consider it now if you press it now, but I am rather disinclined to hear you at the present time unless you say that you rest your case.

Mr. Richards: I wanted to get away if possible, and it would save my remaining over another day to present any testimony.

The Court: I don't think I would want to decide the question one way or the other offhand, without giving it some consideration.

Mr. Richards: I have it very carefully briefed.

The Court: Yes, but I wouldn't have time to consider it now. If you rest your case, of course then I will hear you, but if you make this motion now and argue it I must either decide it now or hold you here until I can give it consideration.

Mr. Richards: I would appreciate it if we could have until morning, if the court is not going to hold an evening session, to determine the question. My judgment is that they haven't made any case at all, as I understand it, but the counsel who is associated with me is perhaps somewhat doubtful, and hesitates about taking the responsibility without further consideration.

At 9:30 a. m., Wednesday, March 10, 1915, the court resumed its session pursuant to adjournment.

Mr. Richards: If the court please, we have concluded to stand upon our motion, so we will have no further testimony so far as Bowerman is concerned.

Mr. Budge: It is understood that the defendant Bowerman rests then.

Mr. Millsaps: Not rests, Your Honor, but we say we stand upon that motion to dismiss. We will not introduce any testimony in his behalf but will stand upon that motion.

FREDERICK V. BISCOE, a witness heretofore duly sworn, being called on behalf of the defendants, testified as follows:

Defendants' Exhibit No. 1 was found by me in the office we now occupy, the receiver's office. That is where I keep the papers belonging to the First National Bank. I brought that down with me when I came here as a witness in this case. I couldn't say positively when I first saw that paper; possibly some time last spring. I have seen a good deal of Mr. Yeager's handwriting. I couldn't positively identify it. I know his signature. I wouldn't say positively that the lines written at the bottom of the last page of this exhibit are in the handwriting of Mr. Yeager. It looks like Mr. Yeager's handwriting but I am not sufficiently familiar with it to absolutely identify it.

H. G. KING, a witness heretofore duly sworn, being called on behalf of defendants, testified as follows:

My name is H. G. King. I reside at Salmon, Idaho. I am the same Mr. King mentioned in Plaintiff's bill of complaint as being the president of the First National Bank of Salmon. I was holding such office at the time I made the purchase of the Langsdorf & Company Bank. In round figures, we received in notes from Mr. Langsdorf on the purchase of the bank \$167,000.00, all drawing 10 and 12 per



cent interest except one note, which was drawing eight per cent interest. When Mr. Langsdorf brought over the \$167,000.00 worth of notes, we paid him \$14,500.00. That was all the money we paid him at the time. Having purchased the bank of Mr. Langsdorf, whereby we took over his business, he had to turn over to us all the deposits. He first of all turned over the notes, amounting to \$167,000.00, and we paid him \$14,500.00. The balance was placed to Mr. Langsdorf's individual credit as a deposit in the bank, the difference between the two amounts amounting to about \$140,000.00. From time to time, as Mr. Langsdorf checked up with his depositors, over his preparation to turn them over to the First National Bank, as soon as he had his books balanced, he would give them a check on the First National Bank on his account, and they would bring it over and deposit it in the First National Bank. In that method the deposits of Langsdorf & Company were transferred to the First National Bank. So we weren't out anything on the hundred and forty some odd thousand dollars. The results showed that the notes we secured from Langsdorf & Company were practically all good, because they have all been paid since then. The majority of the big notes, the large notes, were all paid within ninety days; all the excess notes we got from Langsdorf with the exception of one were paid in ninety days from the time we made the purchase. The results showed that the interest that we received on the notes that we purchased of Langsdorf more than offset the pre-

mium that we paid for the business, because we weren't out only \$14,500.00 for \$167,000.00 worth of 10 and 12 per cent paper. Besides that, we had the benefit of the depositors' money that was turned over to us in lieu of these notes, as an offset against those notes, creating a liability against the bank for which we didn't pay any interest. Furthermore, Mr. Langsdorf re-deposited his \$14,500.00 and took certificates of deposit on the First National Bank, drawing only four per cent in interest, which he left there for, I think, a year. The First National Bank lost nothing on account of paying this premium of \$14,500.00. The records will show that we really made money and increased our business. We doubled our business in fact. Our resources went up just double what they were before. About three or four days before we purchased Langsdorf, I consulted Mr. Claude Gatch, the National Bank Examiner, as to the advisability of the purchase and asked him if he would be willing to meet with the Board of Directors and give us his advice in the matter. Mr. Gatch met with us that evening, in the directors' room, and went over the situation, and I asked him, from a legal standpoint, more than anything, what position we would be in if we purchased Langsdorf, provided there were any loans in excess of the required limit that a bank was supposed to loan. Mr. Gatch informed myself and the board of directors that if we purchased Langsdorf & Company, that those loans would come within the prescribed limits, according to section—5248, I think

it is, or 5208, relating to excess loans, but that they did come under the head of commercial paper, bought against existing values, in good faith. That is the way he explained the statute to me. I was conversant with the statute at the time. He assured me that those loans, if there were any in excess of the prescribed limit, would not be classed as excess loans, because they would come within the meaning of the law as commercial paper. Then the board asked him quite a number of questions. I remember that Mr. Andrews cross-examined him, and others of the board cross-examined him, or, rather, asked him, and he advised us in the premises that he thought, under all the circumstances, that it would be a good deal for us to buy out Langsdorf & Company. There was another thing which influenced us to take this action. I knew that another party was figuring on starting a bank in Salmon and that he had made a proposition to Mr. Langsdorf to pay him \$12,500.00 premium for his business. That offer had already been made to Mr. Langsdorf and I knew it.

Q. Now with reference to the certain loans which appear by the book to have been made by the First National Bank, and which you have been shown here for the purpose of showing negligence, I wish to call your attention to the one made in November, 1909, to Peter McKinney, in the sum of \$14,000.00, and inquire whether that was a loan made by you.

A. That was a note signed by two parties, I think, J. McPherson, and H. S. Waters, payable to a third party, for the purchase of certain property,

and Peter McKinney endorsed that note and sold it to me, and I bought it as commercial paper, and it was afterwards paid in full. I might say that Harry Loveland never reported that to the Government as an excess loan. He was a National Bank Examiner.

Q. Can you explain the two notes, one for \$8000.00 and one for \$6000.00, dated January 26, 1910, given by McPherson & Waters?

A. Yes, I can explain that. The \$8000.00 note was simply a note that I negotiated for them, and sold it to the First National Bank of Dillon, and B. F. White held that note. I didn't hold the note at all. You won't find that it was in the bank until later than that. The \$6000.00 note was a separate transaction, within the prescribed limit.

Q. On the 2nd day of February, 1910, the records show one note for \$3000.00 to Mrs. A. Eckersall, and one note for \$6000.00. Explain that.

A. It is listed here in the register that is presented every month to the board of directors, as a note of Arch Eckersall, and secured by a mortgage in September for \$6000.00, another note to Lizzie Eckersall, his wife, secured by a mortgage on cattle that she owned, for \$3000.00.

The note given by G. H. Monk & Company, for \$8000.00 was taken from Langsdorf & Company, and was afterwards paid in full.

Another note from G. H. Monk & Company for \$6000.00 was a loan direct from our bank, and within the prescribed limits.



The loan of \$7100.00 to Peter McKinney, endorsed by Mulkey, I purchased from W. H. Mulkey. That was a straight out purchase, under the head of commercial paper, endorsed by a third party and that was paid in full.

As to the W. S. Hammond notes, one for \$1000.00 and the other for \$6000.00, the one for \$6000.00 was made to old Wellington Hammond who lived up on the Pahsimari. The \$1000.00 note was made to William Hammond. Both men are well known there. They are both W. S. They are marked in the register "W," but I know that of my own knowledge,—making the deal with Wellington Hammond and the deal with William Hammond, but it has only got "W," just the initial, there. They are men well known there. There would be no other record of those loans except the notes themselves and they are paid.

The three notes given by H. W. Soule and others in the sum of \$5000.00 each were paper taken from Langsdorf and eventually paid in full. The notes to L. T. Ramsey, one for \$6000.00 and the other for \$2000.00 were, I am sure, speaking from memory, renewal loans. One was L. T. Ramsey and the other, I think, was A. E. Murphy, endorsed by Ramsey, but they were made some 12 or 18 months before December 31, 1910. A. E. Murphy was Dr. Murphy. I would have to trace it back to the original note. If I had the note of course I could trace it back. It would take some little time to look it up, because the note was made originally at the time that Ramsey



bought some sheep, and that was in 1908, I think it was, and I would have to go through all the records and trace the renewals, because it wasn't a new loan at that time. I really don't know whether the \$6000.00 and \$2000.00 notes were paid. The receiver could tell the condition that they are in today; I don't know. I know that part of them have been paid; I know that much, but what there is left I don't know. I stated that the \$6250.00 Pollard note was simply the accumulation of prior existing notes and the \$1700.00 Pollard note was to cover their joint overdrafts. I allowed them to overdraw to the extent of \$1700.00 because Mr. Pollard was putting up a building and he had a contract for a building with Mrs. Sheenan. Mr. Pollard wanted to burn 750,000 brick and he came to me and said that his wife was willing to go security for him and that all he wanted me to do was to advance the money to pay the labor for the men. He had the machinery to make the brick with. He went to work, and at the end of every month drew checks on the bank for his pay roll. I honored his checks, and on the Monday morning following Mr. and Mrs. Pollard would come in and give me a note for the amount of the overdraft. In that way we had several of Mrs. Pollard's notes, until it became \$6000.00. That was then put into one note. In the meantime he had a brick yard there with about 750,000 brick. After these brick were disposed of Mr. Pollard was to come in and pay the proceeds that he got from the brick, the sale of the brick, to reduce the indebtedness to the bank. In

the meantime, there was a slow sale for brick, and he started to build a brick house, explaining that that would be the best way to utilize some of those brick and he put up that house, and eventually, to complete it, and to pay the carpenters and so on, he had to put a mortgage on it, which he did through the Western Building & Loan Association. The price of property, after he got that building finished, deteriorated very rapidly. We had quite a reaction in real estate there, in values, and Mr. Pollard was himself unable to retain it. Later on I think Mr. McCormick sold it, or rather the Western Building & Loan sold it. I took a mortgage on the building to secure these brick, and the Western Building & Loan had the first mortgage on it, and they foreclosed on it and left us simply with the equity in, as we thought, the brick, and in that way created somewhat of a loss. In the meantime Mr. Pollard had contracted another building with Mrs. Sheenan, and put quite a good many of these brick into that building, and he got into a law suit with Mrs. Sheenan, and I don't know today whether that law suit was ever settled. If so, it was during my absence. In that way Mr. Pollard did create an overdraft, by using some more money, by drawing on me, at the time he was erecting these buildings; and I granted it for the simple reason that I expected that he would get his contract money in full on the completion of the work, which he did not, and thereby I was misled; my judgment didn't pan out the way I anticipated it would. I certainly had reason to believe

that Mrs. Pollard was good security at that time for the simple reason that I purchased Pollard's ranch some years before then, at a price of \$30,000.00 and paid them the money, except a mortgage of \$6500.00, given to Mrs. Pollard for her share in it, and I knew at the time I made this loan to Mrs. Pollard, to begin with, that she held this mortgage of \$6500.00. She was doing business in her own name, and she signed those notes as a principal, and Mr. Pollard did not sign the notes as principal, and I didn't make the loan to Mr. Pollard, but to Saphronia A. Pollard, and I felt sure our money was perfectly safe, because I knew at the time that she had this mortgage and note for \$6500.00, secured by 480 acres of land that was unincumbered, within a mile of town. The loans to the Salmon Lumber Company, Mr. Brown, and Mr. and Mrs. Pollard, were made by an overdraft, and I permitted—John Lottridge was cashier and I was president, and were the ones that honored the checks that were presented over the counter and created the overdraft. As to the loans made to the Salmon Lumber Company: in a general way they were doing a very large business, and how they came to owe us so much money was because they made a contract with two sawmills up at Gibbonsville to take their entire output of lumber for the year. Their original output had been quite limited, of these two mills, and in order to eliminate opposition they contracted with those mills to take their entire output. At that time they were the only two mills bringing lumber into Salmon. As soon as that

agreement was signed by the Salmon Lumber Company, the two mills immediately started in cutting lumber as fast as they could. They run those mills day and night; they hired every team they could in the county, in order to deliver as much lumber as possible to the Salmon Lumber Company. And the consequence was that it came in faster than they had means to meet it, and I stood behind their checks and paid them as they would pay for the hauling and the lumber to these respective mills. One mill alone delivered to them over a million feet of lumber that the year before had only cut about one hundred thousand feet.

Q. Calling your attention to the note dated July 1, 1910, number 2140, was that given to cover overdrafts or was it a direct loan?

A. Well, by referring to the records here I can corroborate my statement that I think that nearly all of those loans given by the Salmon Lumber Company were given to cover overdrafts. I see here where the Salmon Lumber Company had an overdraft of \$3800.00. The next day there is a credit of \$3500.00 given in the shape of a note to cover it. A little later on they were overdrawn again \$2500.00. There is a corresponding credit the next day of \$2500.00, to cover that overdraft. Further on down, on another occasion, I see the account is overdrawn \$3388.76, with a credit of \$3500.00, which would be another note to cover that overdraft. That is simply corroborating the statement I made, that the loans of the Salmon Lumber Company, in-



stead of being direct loans made by the board, were created originally by an overdraft, by cashing their checks and then they came in at the end of the month, or I might call them in and ask them for a note for the overdrafts. Plaintiff's Exhibits Nos. 12 and 19 were for an overdraft. No. 27 is a renewal or consolidation of two or three notes; I don't know how many. Exhibit No. 11 is for an overdraft. The other directors, other than Mr. Lottridge and myself, didn't have any knowledge of these overdrafts, unless they were to refer to the individual depositors' ledger, or go through the individual deposit ledger and examine the overdrafts.

Q. I notice on Page 167 of the minutes of the Board of Directors that it reads as follows: "The monthly statement of loans and discounts was read and approved." How was that monthly statement made up?

A. It was made up by the special discount register that we had, that the Comptroller sent us, and—a circular letter, it was, suggesting that in future a copy of all the loans made during the month be entered in a special discount register and presented to the Board of Directors at the end of the month. Either Mr. Lottridge or myself made up the statement of the records of the loans made during the month. The special discount register was examined by the Board of Directors regularly at these monthly meetings. This book doesn't contain the notes which appear to be excessive loans. They wouldn't appear here in that way.



The Court: Now, just in that connection, show me what was disclosed to the board at a meeting where this minute entry was made.

A. Here are the minutes of the meeting.

The Court: I understand the minutes.

A. It says: "The monthly statement of loans and discounts was read and approved." That is, by the Board of Directors. This was the month of June, 1910, Your Honor, the month of June, approved by the Board of Directors at their July meeting.

The Court: What was it that was read?

A. We read these all out,—this loan of \$100.00; W. J. and Nancy Roos a loan of \$300.00; J. R. ——— to the Sheenan Hardware, a loan of \$55.75. That was the list of loans made during the month, and you will find a copy of those entered on the regular discount register of the bank.

The Court: But I want to know what was read to the Board in connection with this minute.

A. This is the page, referring to the loans and discounts, Your Honor. Each month this list of loans made during the month were entered in this book by Mr. Lottridge, the cashier, or myself and presented to the Board of Directors at their monthly meeting and approved by them.

The Court: Now take a month in which some of these loans were made to the Salmon Lumber Company, some of those notes.

A. I have looked through here, and, as I have

explained, there isn't a note made to the Salmon Lumber Company on this book, because those were—

Mr. Whitcomb: Q. I wish to show by comparison of these respective exhibits to which I have called your attention, to this book and show whether the book contains them or not.

A. Just call those out and I can tell you.

Q. January, 1911, \$3000.00.

A. The number of the exhibits.

Q. 2616, Exhibit No. 12.

A. No, it isn't on the book.

The Court: May I ask right there why it wasn't in this list that was read to the Board?

A. Because, Your Honor, they weren't put on there, because they were loans created by overdrafts and the loan was already done, and the note was made during the month and took the place of the overdraft, and it wasn't a specific loan, as we termed it, made to some one, and they weren't registered on this book. Exhibit No. 10, being a note given to the First National Bank on November 2nd, 1910, numbered 2475 for the sum of \$3500.00, does not appear on the discount register. Neither does Plaintiff's Exhibit No. 27, being a note given by the Salmon Lumber Company, for the sum of \$3500.00, No. 2140. Plaintiff's Exhibit No. 11, dated December 10th, 1910, for \$6000.00, No. 2551 does not appear upon the discount register nor Plaintiff's Exhibit No. 9 for \$2500.00, the number of the note being 2191. The Board of Directors at their monthly meet-

ing or at any meeting which they had did not acquire any knowledge of the existence of these notes. Plaintiff's Exhibits No. 15 and No. 28, being notes given by Harry Brown to the First National Bank of Salmon, dated January 2, 1911, one for the sum of \$6500.00, the other for \$6250.00 don't appear on the discount register. The notes were given to cover Brown's overdraft at different times. The individual deposit ledger would show. I gave Mr. Brown credit in the matter of overdrafts because he was doing business thirty or forty miles from town and he couldn't get in very often and he had got a contract there with the Salmon Lumber Company for the output of his mill, and I know that part of that money was furnished to pay for the two million feet of lumber that he contracted for to the Government. Then when he was working up at the mill he made his pay roll by just drawing checks on the First National Bank of Salmon, and they were in due course honored by Mr. Lottridge, cashier, or by me. We were the only two acting officers at the counter at that time. And that is how the indebtedness was created, but we didn't make any specific loan to him to begin with. I acted entirely on my own initiative and not by reason of the advice or consent of the board of directors, and that is true in relation to the overdrafts of the Salmon Lumber Company. The reason I had to believe that those notes would be paid by Mr. Brown was that Mr. Brown was making a profit, or I thought he was making a profit on every thousand feet of lumber that he sawed up there in

the mill, and eventually those notes would be paid in full. He bought the timber of the Government, and he had one of the best locations for a mill in Lemhi County, right up Lick Creek, in a big body of pine timber. He had an elegant mill, two large boilers, 40 and 60 horse-power boilers, and they say it was the finest mill in Lemhi County. And had the bottom not dropped out of building operations there in Salmon, and the closing of the bank, I haven't any doubt but what they would all have been paid up, the Lumber Company and Brown, and those debts would have been paid in full. And I do know that Hal Brown had a lot of lumber stored on the North Fork that was hauled to town and put on a certain lot there, and it amount to, I think, in the neighborhood of somewhere near two hundred thousand feet. At the time these overdrafts were allowed and paid by the bank, common lumber, that is, regular common board lumber, was selling at \$20.00 a thousand; I know that. The surface lumber or clear lumber, whatever it might be, varied in price all the way from \$20.00 to \$50.00. Brown had more clear lumber than any mill in the county, and that clear lumber was sold for \$30.00. Plaintiff's Exhibit Nos. 15 and 28, respectively, dated January 2, 1911, one for the sum of \$6500.00 and one for \$6250.00, and numbered 2595 and 2592, respectively, do not appear upon the directors' discount register. I don't remember whether I ever consulted the Board of Directors about receiving these notes for overdrafts allowed Mr. Brown. Plaintiff's Ex-

hibit No. 14, being a note given by the Pollards for the sum of \$6250.00, dated June 29, 1910, and numbered 2460, does not appear upon the discount register. The reason it didn't appear is that it is in the same category as the other notes,—they were overdrafts; they were just given to cover an overdraft. Plaintiff's Exhibit No. 13, the \$1700.00 note given by the Pollards, numbered 2459, does not appear upon the directors' discount register. I stated that the Pollard note for the sum of \$6250.00, Plaintiff's Exhibit No. 14, was given for other notes, that is, it represented an accumulation of notes.

Q. These other notes for which it was given, if they were for direct loans, would they appear upon that discount register?

A. If they were a direct loan and not to replace an overdraft, it would appear on this record—direct loans would. Renewal of a note wouldn't appear on the register. I don't remember of ever having counselled with the Board of Directors at any of its meetings with regard to these particular loans in the matter of overdrafts. Concerning the closing of the bank there are so many things that enter into that that it would take quite a little while to answer that question.

Q. State it briefly.

A. But in reality the bank was very prosperous and improving in its business connections up to the time that a certain suit was brought against me, a civil suit, by one Lamborn and Richards, in which



the papers, especially the Boise papers, gave me a great deal of notoriety, with regard to a certain suit having been brought against H. G. King, the president of the First National Bank of Salmon, and that was extensively used by my opponents there in Salmon, in advertising that Mr. King, as president of the First National Bank, had been sued for a large amount of money, and I noticed from that time that our business began to fall off, our deposits began to go down. On top of that we had quite a boom in real estate, and people got a little excited, and we extended credits to people that couldn't, at the time we needed the money the most, owing to the reaction that had come about in the advent of the railroad at that time, they were unable to meet their obligations. In the meantime I couldn't call in my notes hardly fast enough to pay off the depositors; deposits were going down, and it necessitated me making loans from bankers in the east, in the shape of re-discounts. The first statement that was issued, showing that the First National Bank was borrowing any money, that was utilized very strongly against me by one bank in town anyhow, and I know from personal knowledge that he started the rumor that the First National Bank was hard up, and was borrowing money. The records will show that within a very limited length of time the deposits decreased, of that little institution in that small town, some quarter of a million dollars, showed a decrease of \$250,000.00 within a very limited time.

Q. That is, withdrawals?

A. Withdrawals. And I met all those withdrawals, and still kept above water, and, I don't want to say it egotistically, we struggled as hard as any man ever could to save that institution, and three days before the notice was put upon the door, Mr. Harry Yeager, the national bank examiner, came in on his trip there to examine the bank, and at that time we were getting very closely run; rumors were flying very fast and furious all over town, and the other banks were taking advantage of it, and it was only a question of time, in my mind, but what we would have to close the doors, provided we couldn't get some relief. And so I told Mr. Yeager. And he examined the papers, examined the institution, and went over the papers of the bank, and he said, "Mr. King," he said, "I can't close you; I can't close your doors." He says, "You are not insolvent, but," he said, "if you want to go into voluntary liquidation and stop doing business, then," he says, "that is up to the Board of Directors; but I can't take the initiative, only on condition that I consider you are insolvent." And he wouldn't, and we consulted him a little further. I called in the Board of Directors, and really upon his advice,—he said, "The only thing you can do, if you want to close,—I can't close you, but you can go into voluntary liquidation and close your doors tomorrow morning,"—and that is what we did. A conversation occurred between Mr. Yeager and myself and others about disposing of the property so that everything would be paid in full. Mr. Yeager was immediately put in charge of the bank, as soon as that notice was on there. He was there, and

naturally, representing the Government, he took charge of it. A proposition was made by G. B. Quarles, the president of the Citizens National Bank, to take over the deposits of the bank, or rather to pay off the depositors and take over the assets of the bank, pay the depositors in full, issue a notice to that effect, that they would pay the depositors in full, and at the end of a year, if there were any of the assets left, they were turned over to them, after taking out a reasonable compensation for the same, they would turn them over to the stockholders. The reason why that policy wasn't carried out was, I think—I am pretty sure, that Mr. Yeager turned that proposition down. The Citizens National Bank offered to do that.

I remember Defendant's Exhibit No. 1. At the time the bank failed, at the time Mr. Yeager was there making an examination, he called my attention to the indebtedness of the Salmon Lumber Company, and he and I went over to see C. D. Slaughter, the manager. I went with Mr. Yeager, and we went over for the purpose of making an inventory and getting out a financial statement of their condition, and they worked day and night in order to get this out, and this was the result, as prepared by C. D. Slaughter and certified to by Mr. Yeager. To verify that, Mr. Yeager writes out the certificate in his own handwriting: "I hereby certify that the above and foregoing is a true and correct statement of the affairs of the Salmon Lumber Company this 13th day of June, 1911,"—and he swore Mr. Slaughter to that. Mr. Yeager made this inventory. He went over there with Mr. Slaughter and stayed over there,

and when he brought this back he and I talked the matter over, and he said, "They have got \$36,000.00, nearly \$37,000.00, worth of assets over there," and I went over it with Mr. Slaughter, and I know it, and they are perfectly solvent. The only thing that I remember, when Mr. Yeager found out the amount of merchandise they had on hand, he insisted that they take out more insurance and all the insurance was assigned to the First National Bank of Salmon.

Defendant's Exhibit 1 was here offered in evidence for the purpose of showing the amount of property which the Lumber Company had on hand, and as showing the good faith of the First National Bank in paying these overdrafts, thinking that the company had sufficient funds behind it to meet them.

#### DEFENDANT'S EXHIBIT NO. 1.

F. W. Carl, Pres.

C. D. Slaughter, Mgr.

#### SALMON LUMBER COMPANY, LTD.

Dealers in all kinds of Lumber.

Shingles, Lath, Moulding, Doors, Windows, Finishing Lumber, Lime, Hay and Grain and Builders' Hardware.

Salmon, Idaho, June 13, 1911.

Sold to M. Accounts Payable.

12 per cent interest will be charged on all bills not paid in 30 days.

No.		No.	
Date.	Pcs. Description.	Ft. Price.	Amt. Total.
	Hal Brown Mill		\$ 411.03
	Authur Collins		570.93
	Dant. Russell		731.93

Morrison Merrell & Co.	283.26
Norvell Shaplight Hdw. Co.	
due 7-11-11	43.70
Dan Ross	3.40
Radfords Sash & Door Co.	47.21
Salmon National Forest	14.57
Doc. Witwell	2.25
	<hr/>
	\$2108.28

## DEFENDANT'S EXHIBIT NO. 1—2.

F. W. Carl, Pres.

C. D. Slaughter, Mgr.

## SALMON LUMBER COMPANY, LTD.

Dealers in all kinds of Lumber.

Shingles, Lath, Moulding, Doors, Windows, Finish-  
ing Lumber, Lime, Hay and Grain and  
Builders' Hardware.

Salmon, Idaho, June 13, 1911.

Sold to M. Accounts Receivable.

12 per cent interest will be charged on all bills  
not paid in 30 days.

No.	No.		
Date.	Pcs.	Description.	Ft. Price. Amt. Total.
		Frank Alerton	\$ .65
		Clark Alby	21.75
		Jack Bunday	.45
		W. J. Brown	97.67
		Alex Barricks	33.37
		A. E. Burkhart	19.84
		Mrs. G. W. Benjamin	39.56
		Martin Borrovac	325.98
		W. B. Barton	41.60



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John Brumba	1.50
John Bolander	4.00
Autom Christianson	24.35
Wm. Clayton	401.78
G. B. Chapman	15.93
A. C. Cherry	20.15
Citizens National Bank	188.79
Homer Chaffee	3.50
C. & Stsitson	6.75
Carl Clark	8.25
Joe Davelt	5.45
Jas. Deatly	6.55
F. M. Dean	427.65
Z. W. Ellis	30.05
Episcopal Church	6.50
First National Bank,	
Deposit money in bank	378.05
W. B. Fowler	41.83
Fred Frey	.65
A. E. Anrgesson	66.50
First National Bank	1.00
Eli Groilet	340.48
F. G. Havemann	40.00
W. M. Hart	37.68
Doc. Hudkins	55.55
Ed Hins	22.75
Chas. Haman	5.45
Foney Jackavoc	18.61
Kirrgam & Bradshaw	28.50
Frank Kirtley	29.17
	<hr/>
	\$2798.29

DEFENDANT'S EXHIBIT NO. 1—3.

F. W. Carl, Pres.

C. D. Slaughter, Mgr.

SALMON LUMBER COMPANY, LTD.

Dealers in all kinds of Lumber.

Shingles, Lath, Moulding, Doors, Windows, Finish-  
ing Lumber, Lime, Hay and Grain and  
Builders' Hardware.

Salmon, Idaho, June 13, 1911.

Sold to M. Accounts Receivable.

12 per cent interest will be charged on all bills  
not paid in 30 days.

No.	No.		
Date.	Pcs.	Description.	Ft. Price. Amt. Total.
		Amount Brought Forward	\$2798.29
		Lemhi County	5.92
		John Lotirage	476.27
		Lusburg Mining Co.	69.45
		E. C. Louis	61.85
		Joe La Munyan	77.05
		Leadore State Bank	11.10
		J. D. Lee	12.45
		Lemhi Land & Irr. Co.	2.00
		M. C. Lambeth	9.00
		W. J. Morgan	56.60
		Mitchell & La Munyan Bros.	671.01
		Mrs. Al Mathews	10.77
		John Manfull	1.60
		J. P. Maxfield	26.80
		G. A. Murphy	108.14
		Methodist	5.11
		Wm. Mulkey	29.63
		A. Mogg	23.70



No.	No.		
Date.	Pcs.	Description.	Ft. Price. Amt. Total.
		Amount Brought Forward	\$5528.94
		Reynolds & Hoffman	28.14
		W. W. Schultz	11.20
		L. A. Spooner	.75
		B. W. Seiner	15.93
		H. F. Soul	25.00
		Mrs. Seiner	10.09
		A. A. Smith	55.00
		Dick Spillman	188.74
		School District No. 1	.85
		F. A. Slegslsmith	49.60
		Herman Stroll	3.50
		Geo. Snyder	21.15
		Salmon Creamery	2.65
		Ferrell Tiny	13.19
		F. M. Tingley	4.75
		Tinday Cattle Co., Ltd.	157.00
		Vogler Plumbing Co.	.35
		Harry White	116.00
		Al Wartman	18.80
		W. J. Wittenburg	72.44
		Geo. Wilson	74.71
		G. C. Williams	5.45
		Henry Williams	3.00
		Fred Williams	25.00
		J. A. Wood	16.15
		Robt. Wilson	17.92
		J. R. Wheeler	4.00
		Yuba Construction Co.	52.50
			<hr/> \$6522.85

## DEFENDANT'S EXHIBIT NO. 1—5.

F. W. Carl, Pres.

C. D. Slaughter, Mgr.

## SALMON LUMBER COMPANY, LTD.

Dealers in all kinds of Lumber.

Shingles, Lath, Moulding, Doors, Windows, Finish-  
ing Lumber, Lime, Hay and Grain and  
Builders' Hardware.

Salmon, Idaho, .....191...

Sold to M. ....

12 per cent interest will be charged on all bills  
not paid in 30 days.

No.	No.	
Date.	Pcs.	Description.
		Ft. Price. Amt. Total.
		Cash in till \$ 35.15
		Mdse. 25683.12
		Plant account 1236.83
		Bldg. account 1689.55
		Expense account 1650.74
		Bills Receivable 90.10
		Accounts Receivable 6522.80
		<hr/> \$36908.28
		Capital Stock and Surplus \$10000.00
		Bills Payable 24800.00
		Accounts Payable 2108.28
		<hr/> \$36809.28

I hereby certify that the above and foregoing is a  
true and correct statement of the affairs of the Sal-  
mon Lumber Company, this 13th day of June, 1911.

SALMON LUMBER COMPANY, LTD.,

C. D. Slaughter, Sec. and Treas.

Personally: C. D. SLAUGHTER.

Endorsed: Filed March 9, 1915.

A. L. Richardson, Clerk.



Mr. Budge: This doesn't show the amount of property the Salmon Lumber Company had at the time the overdrafts were made at all. This inventory is dated the 13th day of June, 1911, after the close of the bank. It can't possibly go to the good faith of their making the loans in 1910.

Mr. Whitcomb: It is perfectly in harmony with the testimony which Mr. King and the others have—

The Court: Overruled. It has a tendency to show the value of the assets of this company, and the value of the assets would have some bearing upon the general question of the good faith of the bank in making the loans. Of course, if counsel for the plaintiff is right, that the making of an overdraft or permitting the making of an overdraft in itself constitutes actionable negligence, then this would be unimportant; but I understand you attempt to go further in the proof and show that, aside from that, it was negligence to make a loan to this company. In other words, if a loan had been made by way of a note, and no overdraft had been permitted at all, it would have been negligence to do so.

Mr. Budge: Yes.

The Court: Now this inventory, if correct, would tend to show that the company had considerable assets, and was solvent, and if it was solvent of course it would be quite a different thing from a case where it was insolvent.

Mr. Budge: But the offer was made, as I understood Mr. Whitcomb, to show that these overdrafts were allowed in good faith, while the inventory pur-

ports to show the condition in 1911. So far as the evidence is concerned, we don't know that they had one foot of lumber in Salmon when these overdrafts were made. There isn't any evidence to that effect, so far as that inventory is concerned. That shows the condition after the bank closed altogether, so that they might have been utterly negligent in making the loans and allowing the overdrafts, when they were made, notwithstanding this inventory.

The Court: That may be true, Mr. Budge, but if they had these assets at this time, some sort of inference or conclusion would be drawn, no doubt, that they had assets of a similar value before that, or approximately that value, although they might have been in a different form, or that it had been a prosperous company.

Mr. Budge: I want to incorporate in my objection that it is incompetent, and hasn't been properly identified, and it isn't shown that this witness made the inventory, or was competent to make it.

The Court: The objection is overruled.

Mr. Budge: An exception.

Q. Mr. King, do you know the reason for the depression, as you have spoken of it, in Salmon, shortly before this bank failed?

A. It is a well known fact that the depression in all values of real estate fell soon after the advent of the railroad, and continued so to do up to the time of the closing of the bank. A great many building operations were suspended, and building that took place in 1910, I know from the fact that there were

scores of houses built in Salmon in 1910—the fact of it is that the bottom fell out of the community, in a sense, in that section of the country, and it has been very much depressed ever since. We naturally expected the railroad to go on down the river, from the fact that they bought thousands of dollars worth of property on the other side of the river. They paid \$15,000.00 to one man for a piece of property. Everyone expected, and the presumption was, that they were going down the river, and they gave it out that they were going down the river. They surveyed the route, and thousands of dollars were spent on that survey. I made the disbursements for the railroad company myself, through the bank, on that survey.

Cross-examination by Mr. Budge:

It is correct that none of the notes which have been introduced in evidence, and signed by the Pollards, the Salmon Lumber Company and by Brown were ever listed in the Directors' Discount Register. Even after the overdrafts were represented by notes which I had taken, they were not listed in the Directors' Discount Register. I may state in that connection that a renewal wouldn't be listed. None of these notes were listed. So far as the list of notes was concerned that was read to the directors at their meetings, I never at any time read these notes to the directors, to my knowledge, or informed them of the possession of these notes by me on behalf of the bank. Mr. Andrews, the defendant, was drawing a salary from the bank at one time. I think he drew a salary

for a year. It was during the year 1910 that he drew his salary. In the month of July, at the meeting of July 6th, 1910, there were present, as shown by the directors' minutes, H. G. King, N. I. Andrews, George Buck, Fred Havemann and J. C. Sinclair and the following appears from the record: "The following report of the condition of the bank was read and adopted." That is the statement and the statement shows there an aggregate of overdrafts of \$17,138.85. So that the directors, including Mr. Andrews, understood at that time that there were overdrafts in that amount and the overdrafts which were then outstanding that had been allowed to the Salmon Lumber Company and Brown and the Pollards on that date were known to the directors, among the aggregate amount of overdrafts. They weren't itemized in the report to the board there. It was just a copy of the trial balance statement, spread on the minutes, and approved, but showing the aggregate amount of loans, and amount of cash on hand, and all that.

Q. The overdrafts which were then outstanding in favor of these companies, or which had been allowed to these companies, were included in this statement which had been approved.

A. If there had been any overdrafts against them in that particular month, yes is the answer.

Q. Well, as a matter of fact, when these notes were executed which have been referred to in the evidence?

A. Yes, at those dates it would show overdrafts,

that is correct. Plaintiff's Exhibits 12, 10, 27 and 9 were all for overdrafts.

Q. So that the notes, Plaintiff's Exhibit 27, and Plaintiff's Exhibit 9, would be shown in the statement of overdrafts approved at the July meeting?

A. During this month, that is, during the month that these minutes are dated, those overdrafts would appear in that aggregate.

Q. And in this meeting on July 6th to which your attention has been called?

A. Every month.

Q. Just answer the question.

A. Yes. These notes were included in that statement of overdrafts which was approved on the 6th day of July, in the aggregate. Part of it was the Salmon Lumber Company. On January 4th, 1911, Plaintiff's Exhibit 12 was executed and is included in the general total here of overdrafts, on January 10th, 1911, the aggregate of which is \$28,657.91.

Q. And, without going into this matter more particularly, that is true as to all the other notes,—the Pollards and Brown, and the other Salmon Lumber Company notes, that wherever they were given for overdrafts they were included in the aggregate of overdrafts as shown by the statement approved by the board at the meeting next held after the overdraft was taken up by the note.

A. It would. The Salmon Lumber Company was a company which members of my family were interested in. I had no interest in it myself.



Q. Did you loan any money to your daughters or to your son-in-law to go into this business?

A. I did. I loaned \$2500.00, or rather Mrs. King, of her own money, loaned my daughter Alice \$2,500.00, and she put that into the lumber company. I loaned C. D. Slaughter an individual loan from the First National Bank of \$2500.00, the proceeds of which he put into the lumber company. C. D. Slaughter, I may say his note was liquidated—

Q. Never mind. Just what did you loan these parties?

A. That would be \$5000.00. We made them a present of \$2500.00, and then I loaned C. D. Slaughter \$2500.00.

Q. Was that all you loaned any of these individuals interested in the Salmon Lumber Company?

A. How do you mean—is that all I loaned them?—are you speaking of me as a banker or an individual?

Q. Of you as an individual.

A. I may have from time to time made them presents. I know I did at some times. I know I gave them money when they were married. I never loaned them money in their business. They had some money of their own, but I didn't loan them any more. C. D. Slaughter drafted the contract between the Salmon Lumber Company and Brown and the other mill owner, for the purpose of enabling the lumber company in which my family was interested to control the lumber market in that country. That was the object to be attained, to control the lumber industry in Sal-

mon at that time. It was not on that account that I carried this man Brown along and allowed him to overdraw. All these men had been doing business with me right along previously to that.

Q. Now you have stated that the loan for those notes for \$7500.00, taken over from the Langsdorf bank, signed by H. W. Soule and others, \$15,000.00, you have stated that those were loans taken over from the Langsdorf Company?

A. They were.

Q. Isn't it true that they were renewed by you, those two notes?

A. We did. They couldn't pay them; I had to renew them. We renewed them for the same amount, just as they stood when we took them from Langsdorf, and the entries which are made in the loan and discount register of loans to Soule and others are the renewal notes and not the original notes which were taken from Langsdorf. Both notes were signed by N. I. Andrews, as well as by the Soules.

Q. And Andrews at that time was indebted to the bank in other amounts, was he not?

A. Mr. Andrews always carried a balance to his credit in the bank.

Q. I am not asking you that.

A. No, directly he was not indebted to the bank. The Andrews Light & Power Company was indebted to the bank, and he was a stockholder. That was a corporation. I don't now whether he owned more stock than Mr. Soule or Mr. Myers; I don't know how many shares of stock he owned. There were

four of them in the company. The other one was F. D. Havemann.

I made trips to St. Anthony once or twice a year; perhaps sometimes I think I went—I know one year I was there twice, one year. I have a sister there. I have seen Mr. Bowerman on one or two occasions while there. I can't recall every instance that I saw Mr. Bowerman. Whenever I went to St. Anthony I naturally called on Mr. Bowerman.

Q. Were you up at St. Anthony during the fore part of 1910?

Mr. Millsaps: We would like to know what the object of this is, of this question.

The Court: Well, I think it is proper cross-examination.

Mr. Millsaps: We would like to know the purpose and raise an objection to it on the part of Mr. Bowerman. We have elected to stand on our motion to dismiss, and, as I understand it, that has eliminated him from any further consideration in this matter. Now, if the object of it is to prove anything as against Mr. Bowerman, we will object to it; if otherwise, we will not.

The Court: Perhaps that would depend on whether you claim any advantage by reason of the testimony that has gone in here through this witness, which would seem to be somewhat in your favor, namely, that when these notes and discounts were called to the attention of the board at their regular meetings, these particular notes in question were not listed, and hence not called to their attention.

Mr. Richards: We claim nothing, if the Court please, except to rest on the testimony as they introduced it in chief. We stopped right there, and are willing to rest our case on the case they made. There is no purpose to have any part of this, so far as Bowerman is concerned.

Mr. Millsaps: This morning we stated that we would stand upon our motion, and it was not our intention to introduce any more testimony. After that we had ourselves entered as associate attorneys—

The Court: I understand your position, Mr. Millsaps. It is unnecessary to re-state it, and of course if you do not claim any benefit by reason of the testimony which has been offered or may be offered, I will have to sustain the objection.

Mr. Millsaps: Our contention not only is that we do not claim it, but our understanding is that we cannot claim any; that is the view we took of it.

The Court: The Court has ruled with you, Mr. Millsaps. Go on.

As to all the other loans which were read off by Mr. Biscoe above the sum of \$6500.00 the loans were straight loans, instead of taking up overdrafts such as the McKinney loan and others. I remember personally making the W. S. Hammond loans myself, and I know that one was Wellington and one was William.

Q. But you have dittoed the name, just the same?

A. I don't think it is in my handwriting. Yes, it is in my handwriting. That is my handwriting;

I certainly did that. I want to call your attention to the fact that the "Mrs." shows very plainly that it was written in there afterwards, because it was Mr. A. Eckersall, and that should have been Mrs., and ditto was put in there at the time, naturally, when Mrs. Eckersall and Arch Eckersall—

Q. That book doesn't speak the truth in regard to that entry, does it?

A. Well, it does speak the truth—\$3000.00 and \$6000.00 to A. Eckersall, and then the top one here is Mrs., but, as I explained, the ditto is A. Eckersall, \$6000.00.

Q. It doesn't show that, does it?

A. That record doesn't. But this book does.

Mr. Andrews, the defendant, during the year 1910 was a member of the committee on loans and discounts. His duties, for which he was paid \$100.00 a month, were to help the other members of the board there in passing upon loans that were made by the bank that were called to his attention, and on several occasions I would get Mr. Andrews to go out and look at the security for some of these loans, so that I could have the benefit of his judgment. He was in and about the bank considerably. Mr. Andrews didn't inspect the books, as he was no bookkeeper. He would have to have some little knowledge of book-keeping, naturally, or he wouldn't know what he was inspecting. He had access to the books. I didn't inform him particularly, as vice-president and a member of the committee, of the general business of the bank. I talked over the loans with Mr. An-



draws, and discounts. I don't know about the overdrafts. Overdrafts were varying all the time, and there was no specific reason that we consulted. Sometimes a man would have an overdraft one day, and would have money on hand the next. They fluctuated so rapidly that I wouldn't know of any particular case where he was called upon to—where I was called upon to inform him or any of the others. Mr. Lottridge and I were the two active officers of the bank and conducting that part of it, and paying the checks over the counter; nobody else waited over the counter but us, and that is the only way an overdraft could be gotten. I don't know that I ever talked with Mr. Andrews about permitting an overdraft to be increased.

Q. Did Mr. Andrews discuss with you the overdrafts of \$17,000.00 or more? Did you and Mr. Andrews discuss that in July, 1910?

A. The discussion would only be in this way, that we would make a remark that the overdrafts in general had gone up so much this month, or that they had increased so much this month. I can't call any time to mind that Mr. Andrews asked me who was being permitted to overdraw or asked me specifically about the overdrafts. I don't recall him ever making any inquiry or indicating any interest in the increase of overdrafts. The overdrafts on July 6th, 1910, are shown to have been \$17,000.00 and some excess. On August 6th, 1910, the overdrafts show \$18,000.00, an increase of \$6000.00. In December, 1910, the overdrafts were \$23,805.00. January

10th, 1911, \$28,657.00. There never was any discussion between Mr. Andrews and myself with regard to the overdrafts, to my knowledge. No one of the board of directors ever made any inquiry with respect to that.

The Western Building & Loan took a mortgage on the property Pollard erected there with the brick. I certainly didn't intend to testify that I took a mortgage upon this property myself. The facts were that Mr. Pollard erected a brick building—I don't know who took the mortgage. I don't think it was I, and I don't think it was taken until after the bank failed. I believe it was taken by Mr. Yeager.

Re-direct examination by Mr. Whitcomb:

Q. Turn to page 139 of the minutes of your meetings, the meetings of your corporation. At the left hand side, on page 139, I see some initials, "C. S. L.," "11-19-09." What do they indicate, if you know?

A. They are the initials of C. S. Loveland, the bank examiner, at the time he examined the bank, and happened to examine the records of the minutes of the meeting.

On page 178 I find the initial of Mr. Loveland, the bank examiner, and on page 184 the initials of C. S. Loveland; on page 187 the initials of Harry Yeager, the other examiner, and the same on page 191. Always the minutes of the bank have been examined from time to time by the different bank examiners that came to Salmon. No criticism was ever offered. Mr. Loveland complimented Sinclair on the way the records of the bank were kept.

He was the secretary. He never made any objection to me of the showing made on any of these pages. The stockholders of the bank during this period were myself and Mr. Bowerman and Mr. Andrews and Mr. Buck and Mr. Havemann, Mr. Lottridge and Judge Olden. Judge Olden had \$1000.00 worth of stock. Guy E. Bowerman had \$10,000.00 worth of stock. Mr. Andrews had \$6600.00 worth of stock. George Buck had three thousand and some odd. Fred Havemann had \$1000.00. John Lottridge had \$1000.00. And I had \$14,000.00. And Sinclair, who is now deceased, \$9600.00.

The Court: I want to ask you how these overdrafts were reported to the board. Your attention has been called to an entry or entries in one of the books here, in which reference is made to the total amount of overdrafts existing at that time, or during the preceding month. How was that fact reported to the board, and what was the basis of this minute entry?

A. Taken from the trial balance statement.

The Court: I say, how was it reported? How did they come before the board?

A. It would come by the secretary of the board reading over the trial balance statement as it is spread on the minutes. It would come before the board just as it is spread on the minutes there.

The Court: You mean a memorandum in writing would be presented to the board, and that would be copied on the minutes, just as it appears here?

A. Yes, it would be copied just as it appears here.

The Court: How did it come that you permitted

overdrafts, when the by-laws seem to prohibit overdrafts?

A. It has always been customary in all national banks to permit overdrafts, Your Honor, and I have been in the banking business for quite a long time, and I never knew of a bank in the United States that did not permit overdrafts, and I think that by referring to any statement of any of the largest and most important banks in the United States you can hardly find one where overdrafts are not part of the assets of the institution.

The Court: That may be true, but how do you explain the existence of this by-law, and also the practice of permitting overdrafts?

A. That by-law was simply a copy of the by-laws of some other national bank, Your Honor, which is customary for nearly all national banks to have. It really wasn't made from our own initiative. It was simply a copy of some other bank's by-laws, and was passed in that way.

The Court: Was the matter never discussed at your board meetings, when these overdrafts were reported, that the permitting of overdrafts was in violation of the by-laws?

A. Not at all, Your Honor. The only way they were discussed was to make a remark that the overdrafts have gone down this month. We tried to keep them down as much as possible, but anyone in the banking business can verify the statement that it is the hardest thing in the world for a banker to keep down his overdrafts. They will crop in. When a check comes in you have either got to throw it out



or pay it, and it would work a detriment to the party, and it would injure your own business, if you throw them out, and you feel at the time that there is no question but what they will be paid in the future; and we were in the habit of letting people overdraw their accounts, sometimes, when they were starting out to buy a bunch of cattle, maybe, not knowing how much they would want.

The Court: What I want to ask you more particularly is about these three or four accounts, the more important ones, the Pollard matter, and the Salmon Lumber Company, and the Brown matter. I think you explained that these notes were given to take up accumulated overdrafts from time to time?

A. Yes, Your Honor.

Q. Were these overdrafts permitted without a previous arrangement, or in accordance with a previous arrangement?

A. Just between myself and the parties. I told them that if they would just draw their checks on us I would honor them.

Q. That was done before they drew the checks, or afterwards?

A. Done before they drew the checks; but I never anticipated that the thing would reach the proportions that it eventually did. But I got hold of it, and I sort of had to hold it up, but it got so large—I wasn't anticipating to advance them this money and let them draw on us for it. They couldn't tell how much lumber was coming in, and they couldn't tell how much money they would want to use. I let



them draw on the bank, and at the end of the month they would come in and cover it with a note, and I gave them the privilege of overdrawing their account, and that is customary in a great many banks.

The Court: I think that is all. Do you desire to ask any more questions, either side?

Mr. Budge: No, Your Honor. I desire to submit these four pages.

The Court: Have you submitted them to counsel?

Mr. Budge: Yes.

Mr. Richards: We would like to have them considered denied, so as to make the issue.

The Court: Very well.

An adjournment was thereupon taken until 1:30 P. M.

Defendants' Exhibit No. 2 was here offered and received in evidence. By order of Court, permission was granted for the withdrawal of plaintiff's Exhibit 26, which is an exact copy of plaintiff's Exhibit 25, save and except that plaintiff's exhibit 26 is signed by C. D. Slaughter and A. K. Carl. The defendants rested, there was no rebuttal and the testimony was closed.

Plaintiff tenders the foregoing and prays that it be allowed as a statement of evidence under equity rule 75.

*Dated* this 26th day of October, 1915.

J. M. STEVENS,  
JESSE R. S. BUDGE,  
CARL BARNARD,  
*Attorneys for Plaintiff.*

*In the District Court of the United States for the  
District of Idaho, Eastern Division.*

FRANK R. McCORMICK, as Receiver of the First  
National Bank of Salmon, a Corporation,  
*Plaintiff,*

vs.

HARRY G. KING, NORMAN I. ANDREWS,  
GEORGE BUCK, GUY E. BOWERMAN, B. F.  
OLDEN, FRED G. HAVEMANN and JOHN  
LOTTRIDGE, *Defendants.*

ORDER APPROVING STATEMENT OF EVIDENCE.

The foregoing statement of evidence being tendered to me for settlement and allowance and it appearing to me that said statement was lodged in due time with the Clerk of this Court and notice of such lodgment and of the time of the proposed settlement appearing to have been given to all parties by their counsel; and it further appearing that more than ten days has elapsed since the notification of solicitors for defendants of the lodgment of said statement and of the time and place when plaintiff would apply to the Court or the Judge thereof to approve said statement; and it further appearing that said statement is in all respects true and correct and contains a full transcript of the evidence reduced to narrative form pertaining to the issues in said cause upon which the decree entered herein on the 29th day of June, 1915, is based;

*It Is Ordered,* That said statement be, and the

same hereby is approved for use on appeal of said cause to the Circuit Court of Appeals for the Ninth Circuit.

*Dated* December 1st, 1915.

FRANK S. DIETRICH,  
*U. S. District Judge.*

Lodged October 27, 1915.

Endorsed:    Filed December 1, 1915.

W. D. McReynolds, Clerk.  
By Pearl E. Zanger, Deputy.

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*In the District Court of the United States for the  
District of Idaho, Eastern Division.*

FRANK R. McCORMICK, as Receiver of the First  
National Bank of Salmon, a Corporation,  
*Plaintiff,*

vs.

HARRY G. KING, NORMAN I. ANDREWS,  
GEORGE BUCK, GUY E. BOWERMAN, B. F.  
OLDEN, FRED G. HAVEMANN and JOHN  
LOTTRIDGE, *Defendants.*

PETITION FOR APPEAL.

*To the Honorable Frank S. Dietrich, United States  
District Judge for the District of Idaho:*

The above-named plaintiff, Frank R. McCormick, as Receiver of the First National Bank of Salmon, a corporation, conceiving himself aggrieved by the order and decree made and entered in the above-entitled cause on the 29th day of June, 1915, wherein and whereby, among other things, it was and is

ordered, adjudged and decreed that the plaintiff do have and recover of and from the above-named defendants, Harry G. King and Norman I. Andrews, the sum of Fourteen Thousand Seven Hundred Dollars (\$14,700.00), and wherein and whereby it was further adjudged and decreed that the plaintiff take nothing by reason of his complaint against the above-named defendant, Guy E. Bowerman, and that as to said Guy E. Bowerman, plaintiff's bill of complaint herein be dismissed, by direction of and pursuant to authority from the Comptroller of the Currency, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from said order and decree, for the reasons set forth in his assignment of errors which is filed herewith; and said plaintiff prays that this, his petition for said appeal, may be allowed and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

*Dated* this 1st day of December, 1915.

J. M. STEVENS,  
JESSE R. S. BUDGE,  
CARL BARNARD,

*Attorneys and Solicitors for Plaintiff,*  
Residence and P. O. Address: Pocatello, Idaho.  
Endorsed: Filed December 1, 1915.

W. D. McReynolds, Clerk.  
By Pearl E. Zanger, Deputy.

*In the District Court of the United States for the  
District of Idaho, Eastern Division.*

FRANK R. McCORMICK, as Receiver of the First  
National Bank of Salmon, a Corporation,  
*Plaintiff,*

VS.

HARRY G. KING, NORMAN I. ANDREWS,  
GEORGE BUCK, GUY E. BOWERMAN, B. F.  
OLDEN, FRED G. HAVEMANN and JOHN  
LOTTRIDGE, *Defendants.*

#### ASSIGNMENT OF ERRORS.

Comes now the plaintiff and files the following assignment of errors upon which he will rely upon his appeal from the decree made by this Honorable Court on the 29th day of June, 1915, in the above-entitled cause:

##### I.

That said decree is erroneous wherein it adjudges and decrees that the defendants, Harry G. King and Norman I. Andrews, are each liable for, and that plaintiff have and recover of and from said Harry G. King and Norman I. Andrews, and each of them, the sum of \$14,700.00 only, the said decree in this respect being necessarily based upon the finding and conclusion of the Court that the extent of the liability of said defendants, having in view the nature of their wrongdoing, as shown by the evidence, is measured and limited by Sections 5147, 5200 and 5239, Revised Statutes of the United States, and that the said defendants are not liable at common law for



the entire loss resulting from their said wrongful conduct.

## II.

That said decree is erroneous wherein it adjudges and decrees that the plaintiff take nothing by reason of his complaint against the said defendant, Guy E. Bowerman, and that as to the said defendant, Bowerman, the plaintiff's bill of complaint be dismissed, the said decree being in this respect necessarily based upon the finding and conclusion that the said Bowerman was not guilty of such neglect of duty as a director of said First National Bank of Salmon as to render him liable either under Sections 5147, 5200 and 5239, Revised Statutes of the United States, or at common law, notwithstanding the fact that the uncontradicted evidence shows: That the said Bowerman was a duly elected and qualified director of said bank from the time of its organization in 1906 up to the time of the failure of said bank on the 8th day of June, 1911; that the by-laws of said bank in force during said period, among other things, provide:

"Section 16. The Board of Directors of this bank shall hold regular meetings at the banking house for the transaction of business on the first Tuesday of each month, and should that day in any year fall upon a holiday, the regular meeting for that month shall be held on such other day as the directors at the preceding meeting may order.

"The Board may also hold special meetings upon the call of the President, Cashier or any three or more members, etc.

“Section 19. No officer or clerk of this bank shall pay any check drawn upon it or pay out money on any order unless the drawer of such check or order shall, at the time of the presentation thereof, have on deposit in the bank funds sufficient to meet such check or order.

\* \* \* \* \*

“Section 29. There shall be appointed by the Board of Directors a committee of three members whose duty it shall be to examine each month the affairs of this bank, to count its cash and compare its assets and liabilities with the accounts of the general ledger, ascertain whether these accounts and all others are correctly kept, whether the condition of the bank corresponds therewith and whether the bank is in sound and solvent condition, and to recommend to the board such changes in the manner of doing business as shall seem desirable, the result of which examination shall be reported to the board at the next regular meeting thereafter.

\* \* \* \* \*

“Section 34. The Board of Directors of the bank shall at each monthly meeting, or oftener, examine and approve all loans and discounts and such approval shall be recorded in a book kept for that purpose.”

And notwithstanding the fact that the uncontradicted evidence further shows that without regard to said provisions of said by-laws and the provisions of the laws of the United States prescribing his obligations and duties as a director of said national banking association, the said defendant, Guy E.

Bowerman, failed to attend any regular or special meeting of the board of directors during the entire period between the date of the organization of said bank and the date it closed its doors, to-wit: the 8th day of June, 1911, and failed, as such director, to exercise any supervisory or other control over the officers or clerks of said bank, or to inspect or examine the loans, discounts and records of said bank monthly or at all; that during said entire period the said officers and clerks of said bank were paying checks and orders drawn by numerous persons, who, at the time of the presentation of such checks and orders, had on deposit no funds with which to meet such checks and orders; that the examining committee of said bank was not reporting to the board of directors as required by the by-laws; that said bank was, during the year 1910 and 1911, being grossly mismanaged to such an extent that it was compelled to suspend business on the said 8th day of June, 1911, and notwithstanding the further fact, as shown by the evidence, that the said Bowerman, during practically the entire period of said mismanagement, had knowledge that said bank was being grossly mismanaged.

### III.

That, by reason of the uncontradicted evidence as recited in the foregoing assignment No. 2, the Court erred in failing and refusing to adjudge and decree that the said defendant Bowerman is liable at common law for all damages sustained in consequence of his negligent conduct, which damages, as shown

by the evidence, amount to Thirty Thousand Three Hundred Seventy-nine and 85-100 Dollars (\$30,-379.85.).

IV.

In order that the foregoing assignments of error may be and appear of record, plaintiff presents the same to the Court and prays that such disposition be made thereof as may be in accordance with law and the statutes of the United States in such cases made and provided, and plaintiff prays a reversal of said decree made and entered by said Court.

J. M. STEVENS,  
JESSE R. S. BUDGE,  
CARL BARNARD,

*Attorneys and Solicitors for Plaintiff,*

Residence and P. O. Address, Pocatello, Idaho.

Endorsed: Assignment of Errors filed with Petition for Appeal. Filed Dec. 1, 1915.

W. D. McReynolds, Clerk.  
By Pearl E. Zanger, Deputy.

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*In the District Court of the United States for the  
District of Idaho, Eastern Division.*

FRANK R. McCORMICK, as Receiver of the First  
National Bank of Salmon, a Corporation,  
*Plaintiff,*

vs.

HARRY G. KING, NORMAN I. ANDREWS,  
GEORGE BUCK, GUY E. BOWERMAN, B. F.  
OLDEN, FRED G. HAVEMANN and JOHN  
LOTTRIDGE, *Defendants.*

ORDER ALLOWING APPEAL.

Upon motion of J. M. Stevens, Esquire, and Budge & Barnard, attorneys and solicitors for the plaintiff, *It Is Ordered* that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree heretofore filed and entered herein on the 29th day of June, 1915, be, and the same hereby is allowed, and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings herein be forthwith transmitted to said United States Circuit Court of Appeals. By reason of the fact that said appeal is taken pursuant to direction of the Comptroller of the Currency, no bond or undertaking on appeal is required.

*Dated* this 1st day of December, 1915.

FRANK S. DIETRICH,

*Judge of the United States District Court for  
the District of Idaho.*

Endorsed: Filed Dec. 1, 1915.

W. D. McReynolds, Clerk.

By Pearl E. Zanger, Deputy.

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*In the District Court of the United States for the  
District of Idaho, Eastern Division.*

FRANK R. McCORMICK, as Receiver of the First  
National Bank of Salmon, a Corporation,

*Plaintiff,*

vs.

HARRY G. KING, NORMAN I. ANDREWS,  
GEORGE BUCK, GUY E. BOWERMAN, B. F.  
OLDEN, FRED G. HAVEMANN and JOHN  
LOTTRIDGE, *Defendants.*



ORDER FOR THE TRANSMISSION OF EXHIBITS.

It appearing to the Court that it is necessary and proper that the original exhibits introduced in the above-entitled cause be inspected and considered upon the appeal of said cause,

*It Is Hereby Ordered*, That the Clerk of this Court transmit by registered mail to the Clerk of the Circuit Court of Appeals at San Francisco, California, Plaintiff's Exhibit 23, Defendant's Exhibit 2, and Plaintiff's Exhibits 6, 7, 8, 29, 30, 31, 32 and 33, the same being the Minute Book, Discount Register, Statement of Overdrafts and Published Notices of Meetings, and that within forty days after the final determination of said cause in the Circuit Court of Appeals the Clerk of said Court return the same by registered mail to the Clerk of this Court.

*Dated* this 1st day of December, 1915.

FRANK S. DIETRICH,  
*U. S. District Judge.*

Endorsed:    Filed Dec. 1, 1915.

W. D. McReynolds, Clerk.  
By Pearl E. Zanger, Deputy.

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*In the District Court of the United States for the  
District of Idaho, Eastern Division.*

FRANK R. McCORMICK, as Receiver of the First  
National Bank of Salmon, a Corporation,  
*Plaintiff,*

VS.

HARRY G. KING, NORMAN I. ANDREWS,  
GEORGE BUCK, GUY E. BOWERMAN, B. F.  
OLDEN, FRED G. HAVEMANN and JOHN  
LOTTRIDGE, *Defendants.*

PRAECIPE.

*To the Clerk of the above-entitled Court:*

You are hereby requested to transmit in printed form to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit the following portions of the record in said cause, to-wit:

1. Fourth Amended Bill of Complaint, particularly bearing in mind that at the trial of said cause four pages were substituted by permission of the Court for four pages of the bill as it appeared at the commencement of the trial. These four substituted pages should, of course, be included in lieu of the four original pages, and bearing in mind also that under permission of the Court during the trial the schedule of overdrafts which theretofore was attached to the second amended bill was detached therefrom and ordered attached to the fourth amended bill as a part thereof, and said schedule is therefore to be considered as a part of the said fourth amended bill.

2. Answer of defendant, Guy E. Bowerman.

3. Answer of defendants, King, Andrews and Edwards.

4. Notice of motion and motion to strike amendment to answer of defendant, Guy E. Bowerman, and affirmative defense of defendants, King, Andrews and Edwards.

5. The minutes of the Court showing the ruling and decision upon said motion to strike.

6. Statement of the evidence.

7. Decision of the Court (Opinion).

8. Decree.

9. Petition for Appeal.

10. Assignment of Errors.

11. Order Allowing Appeal.

12. Order for Transmission of Exhibits.

13. Citation.

14. This Praeceptum.

15. Pursuant to the order of the Court, you are also requested to transmit to the Clerk of the Circuit Court of Appeals with the printed record the following exhibits in the case: Plaintiff's Exhibits 6, 7, 8, 23, 29, 30, 31, 32, 33, and Defendants' Exhibit 2.

16. All exhibits other than those ordered to be transmitted and excepting also plaintiff's Exhibits 1 and 2 (which relate solely to the Langsdorf Bank deal, concerning which no question is raised on the appeal) you are requested to have set forth at length in the printed record at the respective places where it is shown by the statement of the evidence the said exhibits were admitted in evidence.

To save expense in transcribing from the records in your office, plaintiff hereby tenders copies of the above specified portions of the record, save and except the first five and the exhibits which said first

five portions and said exhibits it will be necessary for you to transcribe.

Dated this 1st day of December, 1915.

J. M. STEVENS,  
JESSE R. S. BUDGE,  
CARL BARNARD,  
*Attorneys for the Plaintiff.*

Endorsed: Filed Dec. 1, 1915.

W. D. McReynolds, Clerk.  
By Pearl E. Zanger, Deputy.

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*In the District Court of the United States for the  
District of Idaho, Eastern Division.*

FRANK R. McCORMICK, as Receiver of the First  
National Bank of Salmon, a Corporation,  
*Plaintiff,*

vs.

HARRY G. KING, NORMAN I. ANDREWS,  
GEORGE BUCK, GUY E. BOWERMAN, B. F.  
OLDEN, FRED G. HAVEMANN and JOHN  
LOTTRIDGE, *Defendants.*

#### CITATION.

The President of the United States to the above-named defendants, Harry G. King and Norman I. Andrews, and to E. W. Whitcomb, Esquire, their attorney, and to the above-named defendant, Guy E. Bowerman, and to Millsaps & Moon and Richards & Haga, his attorneys, *Greeting:*

*You Are Hereby Cited* and admonished to be and appear in the United States Circuit Court of Appeals

for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, within thirty (30) days from the date of this writ, pursuant to an appeal filed in the Clerk's office of the District Court of the United States, District of Idaho, Eastern Division, wherein Frank R. McCormick, as Receiver of the First National Bank of Salmon, a Corporation, is plaintiff, and Harry G. King, Norman I. Andrews, George Buck, Guy E. Bowerman, B. F. Olden, Fred G. Havemann and John Lottridge are defendants, to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected and speedy justice should not be done in that behalf.

*Witness* the Honorable Frank S. Dietrich, Judge of the United States District Court for the District of Idaho, Eastern Division, this 1st day of December, 1915.

FRANK S. DIETRICH,  
*Judge of the United States  
District Court for the Dis-  
trict of Idaho, Eastern  
Division.*

Due service of the within citation and receipt of copy thereof admitted this 6th day of December, 1915.

E. W. WHITCOMB,  
*Attorney and Solicitor for  
Appellees, Harry G. King  
and Norman I. Andrews.*



Due service of the foregoing citation and receipt of copy thereof admitted this 1st day of December, 1915.

RICHARDS & HAGA,  
*Attorneys and Solicitors for*  
*Appellee, Guy E. Bower-*  
*man.*

Endorsed: Filed Dec. 9th, 1915.

W. D. McReynolds, Clerk.

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RETURN TO RECORD.

And thereupon it is ordered by the Court that the foregoing transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and the same is transmitted accordingly.

Attest: W. D. McREYNOLDS,  
(Seal.) *Clerk.*

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CLERK'S CERTIFICATE.

*In the District Court of the United States for the*  
*District of Idaho, Eastern Division.*

FRANK R. McCORMICK, as Receiver of the First  
National Bank of Salmon, a Corporation,  
*Appellant,*

vs.

HARRY G. KING, NORMAN I. ANDREWS,  
GEORGE BUCK, GUY E. BOWERMAN, B. F.  
OLDEN, FRED G. HAVEMANN and JOHN  
LOTTRIDGE, *Appellees.*

I, W. D. McReynolds, Clerk of the District Court of the United States for the District of Idaho, do hereby certify that the above and foregoing transcript of pages from 1 to 378, inclusive, contain true and correct copies of the Fourth Amended Bill of Complaint, Answer of Defendant Guy E. Bowerman, Answer of Defendants King, Andrews and Edwards, Notice of Motion and Motion to Strike Amendment to Answer of Defendant Guy E. Bowerman and Affirmative Defense of Defendants King, Andrews and Edwards, Minutes of the Court Showing the Ruling and Decision Upon Motion to Strike, Amendment to Answer of Defendant Guy E. Bowerman, Statement of the Evidence, Decision of the Court (Opinion), Decree, Petition for Appeal, Assignment of Errors, Order Allowing Appeal, Order for Transmission of Exhibits, Citation (original), Praecipe, Return to Record and Clerk's Certificate, which, together, constitute the transcript of the record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the record herein amounts to the sum of \$542.30, and that the same has been paid by the Appellant.

Witness my hand and the seal of said Court, affixed at Boise, Idaho, this 14th day of January, 1916.

(Seal.)

W. D. McREYNOLDS,

*Clerk.*